SUPREME COURT OF THE UNITED STATES.

No. 327.

WAN-ZOP-E-AH ET AL., REPRESENTING THE MIAMI INDIANS RESIDING IN KANSAS, PLAINTIFFS IN ERROR,

vs.

THE BOARD OF COMMISSIONERS OF THE COUNTY OF MIAMI, STATE OF KANSAS.

IN ERROR TO THE SUPREME COURT OF THE STATE OF KANSAS.

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1 Pleas before the honorable supreme court of the State of Kansas, at a special term of said court, begun and held at the court-room in the city of Topeka, in said State, commencing at 10 o'clock a. m. the 18th day of July, A. D. 1865, when were present Hon. Robert Crozier, chief justice; Hon. L. D. Bailey and Hon. Jacob Safford, associate justices, and Andrew Stark, clerk.

Be it remembered, that on the 22d day of July, A. D. 1865, there was filed in the clerk's office of the supreme court of Kansas a petition in error, transcript of record, and waiver of summons, with appearance of defendants in error, which are in words and figures following, to wit:

2 State of Kansas supreme court.

BOARD OF COUNTY COMMISSIONERS OF MIAMI county, Thomas Akers, treasurer, and Daniel Childs, clerk of Miami co.,
vs.
WAN-ZOP-PE-AH *et al.*

The said board of county commissioners, Thos. Akers, treasurer, and Daniel Childs, clerk of Miami county, Kansas, plaintiffs in error, complaining of the said Wan-zop-pe-ah *et al.*, defendants in error, state that at the special June term, A. D. 1865, of the district court of Miami county, Kansas, the defendants in error, by the consideration of said court, obtained a decree against said plaintiffs in error in an action there pending wherein said defendants in error were plaintiffs and said pl'ffs were defendants, a copy of the record and proceedings in said case, duly certified, is hereto attached and made part of this petition, and the said pl'ffs in error assert that there is error in said record and proceedings, in this—

1st. That the court erred in entering and rendering a decree in favor of the said defendants in error perpetually enjoining them from the collection of taxes from the lands petition in said act set forth.

3 2d. That said court erred in rendering a judgment and decree in favor of the def'ts in error and against the plaintiffs in error contrary to the law of the land.

The said plaintiffs in error therefore pray that said decree may be reversed and they returned to all things they have lost thereby.

WAGSTAFF & THACHER,
Attorneys for Pl'ffs in Error.

I hereby enter appearance and waive the above-entitled act on the part of the def'ts in error.
July 20th, 1865.

WILSON SHANNON,
Att'y for Def't in Error.

THE COUNTY OF MIAMI *and State of Kansas, ss:*

Please before the Hon. D. M. Valentine, judge of the fourth judicial district of said State, at a district court sitting within and for said county, at the June special term thereof, 1865, begun and held at the court-house in Paola, in said county, on and from the 24th day of June, A. D. 1865.

Be it remembered, that heretofore, to wit, on the 2d day of May, 1864, Wan-zop-pe-ah, Me-to-seu-yop, Go-to-cap-cap-wah, E-taw-we-ke-sick, headmen of the Miami tribe of Indians, filed in the clerk's
4 office of said court their certain petition for an injunction against the board of county commissioners of the county of Miami, and Thomas Akers, treasurer of said county of Miami, and Daniel Childs, county clerk of said county of Miami, in the State of Kansas, to restrain the said defendants from assessing and collecting taxes upon the land of said tribe of Indians or selling said lands for the same, which said petition was in words and figures following, to wit:

Petition for injunction.

In the district court sitting in and for the county of Miami, State of Kansas.

WAN-ZOP-EAH, ME-TO-SEN-YAH, GO-TO-CAP-WAH, E-tau-we-ke-sick, who institute and bring this action as well for themselves as for the whole of the members of the Miami tribe of Indians of the State of Kansas, plaintiffs,

vs.

THE BOARD OF COUNTY COMMISSIONERS OF THE county of Miami and Thomas Akers, treasurer of said county of Miami, in the State of Kansas, and Daniel Childs, county clerk of said county, defendants.

The above-named plaintiffs, complaining of the said def'ts, the
5 board of commissioners of the co. of Miami aforesaid, and the said Thomas Akers, treasurer, and say that they, the plaintiffs, are members of and belong to the Miami tribe of Indians of the State of Kansas, and are the legally elected and authorized chiefs and headmen of said Miami tribe; and further say that all persons in whose behalf this action is brought are Indians, and are members of and belong to the said Miami tribe.

And the plaintiffs further say that they, the pl'ffs, and all others the aforesaid members of said tribe in whose behalf and for whose benefit and behalf this action is brought, resided in and are citizens of the State of Kansas, and as such are entitled to sue and be sued in all the courts of the State of Kansas.

And the plaintiffs further say that patents from the United States,

conveying all and several the parcels of land mentioned and described in this petition or hereinafter set forth, have been issued to all the members of said tribe as individuals or heads of families, the said parcels of land having been set apart to them theretofore in severalty or by families, in pursuance of the provisions of a treaty made and concluded at the city of Washington between George W. Manypenny, commissioner on the part of the United States, and the
6 following named delegates representing the Miami tribe of Indians, to wit:

Na-how-lae-qwah or Big-legs, Ma-cat-ahin-quah or Little Doctor, Law-a-pen-chah or Jock Hockley; Sone Sam-quah-eoh or John Bowrie, and Wanzoppe-oh, they being thereto only authorized, by said tribe and Ms-shin-go-ma-zia, Po-con-ge-ah-prin-ye-ah-te-mah, Wop-pop-pe-tot or Bondy and Ke-ah-cot-noh or Buffalo, Miami Indian residents of the State of Indiana, being present and assenting, approving, agreeing thereto, and confirming said treaty, which was thus concluded between the parties thereto on the 5th day of June, 1854, and which was advised and consented to, with certain amendments, by the Secretary of the United States, on the 4th day of August, 1854, and also by the before-mentioned treaty, parties of the Miami tribe, and which treaty, with its amendments, in pursuance of the said advice and consent the said Senate, was accepted, ratified, and confirmed by the President of the United States, on the said 4th day of August, 1854, reference being had to the said treaty for the more particular provisions thereof. And the pl'ffs further say that all of the parcels of land hereinafter set forth and described are portions of the seventy thousand acres reserved to the said tribe of Miami Indians for their future homes, by virtue of the first
7 article of the aforesaid treaty; and the plaintiffs further say, that the parcels of land hereinafter described, and all thereof, have been set apart and conveyed by the United States in fee, in severalty to, and are in severalty owned by, the members of the said Miami tribe, and at the time when the assessment and levy for taxes hereinafter mentioned were made, were and had been so set apart, patented to, and owned by the said Miami tribe; the several portions of said land described in the lists of tracts of land hereinafter described, being patented to as aforesaid and owned by the individual members and heads of families of said tribe, as is in said list particularized, set forth, and described. And the plaintiffs further say that all of the lands described in the said list are owned in severalty by the several members of said Miami tribe and nation, and by heads of families of said tribe as is above averred. And the pl'ffs further say that they, the pl'ffs, and all the persons in whose behalf this action is brought, are and compose the same tribe of Miami Indians as it mentioned in the said treaty, and that they, and each of them, accept and possess, each of said tribe, the tract assigned, set apart to,
8 and conveyed to him by patent from the United States as aforesaid. And the pl'ffs further say that the lots and tracts of land in said list hereinafter described are, and each of them is, ex-

empt from and not liable or subject to taxation or the assessment and levy of taxes thereon, under and by virtue of the laws of the State of Kansas, nor liable to sale or forfeiture for the non-payment of the taxes thereon, by virtue of such laws, but the same tracts and lots of land are, by virtue and force of the second article of said treaty, wholly exempt from levy, sale, execution, and forfeiture. And the plaintiffs further say, that the exemption and restrictions of said lands from levy, sale, execution, or forfeiture have never been removed by the legislature of the State of Kansas with the assent of the Congress of the United States. And the pl'ffs further say that the several grants contained in the patents aforesaid of said lots and tracts of land made therein to the several members of the said Miami tribe of Indians are made to them on the express condition that such lots and tracts of land shall not be subject or liable to levy, sale, execution, or forfeiture until the aforesaid restrictions be removed, as is in the second article of said treaty prescribed. And the plaintiffs
9 further say that so it is that the assessor of said county of Miama for the year of 1863, disregarding the provisions and regulations of said treaty, did and have assessed for the purpose of taxation, under the laws of the State, each and every of said tracts of land hereinafter mentioned and described, and the same have been taxed with the sums severally mentioned in the list hereunto set forth, which list and the contents thereof, and the advertisement contained therein, and a part thereof, are made part of this petition. And the pl'ffs further say that or about the first day of April, 1864, the said def'ts, Thomas Akers, then being, and is treasurer of said county of Miami, did cause to be published and printed in a newspaper published in the said county, called the Union Crusader, advertisement and list of tracts of land with the sums of taxes levied upon each in the said county, of which the following advertisement and list is a copy, that is to say:

10 *Miami Indian lands, Miami township.*

Sone-caw-ne-quish	NW	22	19	24	160	
Same	NW. NE. qr	22	19	24	40	10 23
Poh-com-dom-meh	NE. SE	12	19	23	40	
Same	Lot 1	12	19	23	40	
Same	E. hf. NE. qr	12	19	24	80	
Same	Lot 2	12	19	24	80	10 23
Sally Honeywell	Lot 3	18	19	24	44	
Same	Lot 4	18	19	24	40	
Same	Lot 5	18	19	24	46	
Same	Lot 6	18	19	24	27	
Same	Lot 7	18	19	24	31	
Same	Lot 10	18	19	24	23	10 76
Wu-pe-po-qua	Lot 8	18	19	24	37	
Same	Lot 9	18	19	24	40	3 75
Pe-nah-que-nan-yah	NE. SW	18	19	24	40	
Same	N. hf. NE. qr	18	19	24	80	
Same	Lot 1	18	19	24	40	
Same	Lot 2	18	19	24	22	
Same	Lot 10	7	19	24	17	10 14

Miami Indian lands.—Continued.

Po-co-she-ah	N. hf. SW	8	19	24	80	
Same	NE. SE. qr	8	19	24	40	
Same	Lot 5	7	19	24	60	
Same	Lot 9	7	19	24	34	9 91
Wa-inon-do-mon-qua	NE. hf. SE	9	19	24	80	
Same	SW. qr	9	19	24	40	
Same	SE. NW. qr	9	19	24	41	
Same	SW. NE. qr	9	19	24	140	10 23
Non wo-cock-a-rok	SW. qr	10	19	24	160	
Same	SW. NW	10	19	24	40	10 23
Snop Rechardeulle	N. hf. SW	5	19	24	80	
Same	N. hf. SE	5	19	24	80	
Same	Lot 1	6	19	24	34	9 96
Mary Pigeon	N. hf. NE	17	19	24	80	
Same	W. hf. SW	9	19	24	80	
Same	NW. NW	16	19	24	40	10 23
So-no-quah	SE. SW. qr	9	19	24	40	
Same	SW. NW. qr	16	19	24	40	
Same	E hf. NW. qr	16	19	24	40	
Same	SE. NE. qr	17	19	24	40	10 22
n-epe-ze-qua	S. hf. NE. qr	14	19	24	80	
Same	S hf. NW. qr	14	19	24	80	
Same	SE. SE. qr	15	19	24	40	10 23
So-ca-ro-mah	NW. NW. qr	5	19	24	42	
Same	NE. NW. qr	5	19	24	40	
Same	NW. NE. qr	5	19	24	40	
Same	Lot 1	6	19	24	25	
Same	Lot 2	6	19	24	21	8 80
Sah-we-pe-s(-)ua	E hf. NW	5	19	24	80	
Same	S. hf. NE	5	19	24	80	
Same	Lot 3	6	19	24	19	
Same	Lot 5	6	19	24	12	9 74
Oh-gan-de-qau	N. hf. SW. qr	11	19	24	80	
Same	N. hf. SE. qr	11	19	24	80	
Same	SE. SE. qr	11	19	24	40	10 23
Po-con-ze-quah	NE. hf. SE. qr	14	19	24	80	
Same	N. hf. NW	14	19	24	80	
11 Same	NE. NE. qr	14	19	24	4	10 23
Re-no-zan-zuh	S. hf. SE. qr	10	19	24	80	
Same	SE. SW. qr	11	19	24	80	
Same	SW. SE. qr	11	19	24	40	10 23
E-pe-le-a-be or Cubbago	E. hf. NW. qr	17	19	24	80	
Same	SW. NE. qr	17	19	24	40	
Same	Lot 2	17	19	24	28	
Same	Lot 3	19	19	24	51	10 78
Lewis Gebo	S. hf. SE. qr	16	19	24	80	
Same	S. hf. SW. qr	15	19	24	80	
Same	SW. SE. qr	15	19	24	40	10 23
Monysah	S. hf. NE. qr	18	19	24	80	
Same	SE. NW. qr	18	19	24	40	
Same	N. hf. NW. qr	17	19	24	80	10 23
Pe-ton-equa	SE. SE qr	7				
Same	S. hf SW	8	19	24	80	
Same	S. hf. SE	8	19	24	80	
Lo-ne-to-shims	Lot 4	17	19	24	46	
Same	Lot 6	17	19	24	24	44 00
Moh-koon-soh	W. hf. NE. qr	16	19	24	80	
Same	W. hf. SE. qr	9	19	24	80	
Same	SW. NE. qr	9	19	24	80	10 32
Adalene Gebo	W. hf. NE. qr	16	19	24	80	
Same	SE. NE. qr	16	19	24	40	
Same	S. hf. SE. qr	9	29	24	80	10 23

Miami Indian lands.—Continued.

Joseph Gebo	W. hf. NW. qr	15 19 24	80	
Same	NE. NW. qr	15 19 24	4	
Same	NW. NE. qr	15 19 24	40	
Same	NE. NE qr	16 19 24	40	10 23
Kash-a-koon-sah	S. hf. SW. qr	16 19 24	80	4 09
Pemis-se-oh	S. hf NW. qr	8 19 24	80	
Same	S. hf. NE qr	8 18 24	80	
Same	Lot 4	7 19 24	53	10 89
Mo-se-tah	NW. NW	7 19 24	40	
Same	SE. NE. NW	7 19 24	40	
Same	SE NW. qr	7 19 24	40	
Same	NE SW. qr	7 19 24	40	
Same	Lot 3	7 19 24	22	
Same	Lot 6	7 19 24	16	10 10
Lewis Gebo	N. hf SW. qr	15 19 24	80	
Same	NW. SE qr	15 19 24	40	
Same	SW. NE. qr	15 19 24	40	
Same	SE. NW. qr	15 19 24	40	10 23
Michael Gebo	N. hf. SE qr	16 19 24	80	
Same	N. hf. SW	16 19 24	80	
Same	N. SW qr	17 19 24	40	10 23
Woh-sah-con-zoh	N. hf. NW	8 19 24	80	
Same	NW. NE. qr	8 19 24	40	
Same	Lot 1	7 19 24	54	
Same	Lot 2	7 19 24	22	10 10
Ne-pe-ah-kan	S. hf. W. qr	5 19 24	80	
Same	SW. SE qr	5 19 24	40	
Same	SE SE qr	6 19 24	40	
Same	Lot 6	6 19 24	9	
Same	Lot 7	6 19 24	33	10 30
Sah co-can-mah	N hf SW	4 19 24	80	
Same	SW. NW. qr	4 19 24	40	
12 Same	SE. SW. qr	4 19 24	40	
Same	SW. SE. qr	4 19 24	40	10 23
John Pigeon	W. hf. NW	9 19 24	80	
Same	NE. SE. qr	8 19 24	40	
Same	NE. NE. qr	8 19 24	40	
Same	SE. SE. qr	5 19 24	40	10 23
Kish-ke-ko-quah	NW. NW. qr	4 19 24	40	
Same	NE. NW. qr	4 19 24	40	
Same	NW. NE. qr	4 19 24	40	
Same	NE. NE. qr	4 19 24	40	
Same	SE. NE. qr	4 19 24	40	10 23
Choh-e-sen-quh	S. fr. NE. qr	4 19 24	80	
Same	N. hf. SE. qr	4 19 24	80	
Same	NE. NW. qr	4 19 24	40	10 23
Mary Tun	E. hf. SE. qr	14 19 23	80	
Same	E. hf. NE. qr	14 19 23	80	
Same	SW. SE. qr	14 19 23	40	10 23
Kin-ge-tah-no-tah	NW. NW.	6 19 24	40	
Same	NE. NW. qr.	6 19 24	40	
Same	NW. NE. qr.	6 19 24	40	
Same	SW. NE. qr.	6 19 24	40	
Same	SE. NW. qr.	6 19 24	40	10 57
Ming Peoh	SW. NW. qr	6 19 24	40	
Same	NW. SW. qr	6 19 24	40	
Same	NE. SW. qr	6 19 24	40	
Same	SW. SW. qr.	6 19 24	40	
Same	SE. SW. qr	6 19 24	40	10 23
Pe-te-ton-o-quah	NW. qr	7 19 24	160	
Same	Lot 7	7 19 24	160	
Same	Lot 8	7 19 24	27	
Same	Lot 1	7 19 24	18	

Miami Indian lands.—Continued.

Pe-te-ton-o-quah	Lot 2	13 19 24	27	
Same	Lot 3	13 19 24	37	
Same	SW qr.	13 19 24	6	21 23
Tom	NW. NW. qr	10 19 24	160	
Same	S. hf. SE. qr.	15 19 24	40	10 23
Emma Hockley	S. hf. SW. qr	14 19 24	80	
Same	SE. SE. qr.	14 19 24	80	
Same	N. hf. SE.	15 19 24	40	10 23
Alace Hockley	N. hf. SW. qr	14 19 24	80	
Same	NE. SE. qr	14 19 24	80	
Same	SE. NE. qr	15 19 24	40	10 23
Unknown	E. hf. NW.	25 19 24	40	
Same	Lot 1.	30 19 24	80	
Same	Lot 2.	30 19 24	45	
Same	S. hf. SW. qr	30 19 24	44	10 68
Sah-po-son-goh	W. hf. SE. qr	3 18 24	80	
Same	NE. SE. qr	3 18 24	80	
Same	N. hf. SW.	3 18 24	80	10 23
Ah-son-son-o-quah	S. hf. NW. qr.	3 19 24	80	
Same	SW. NE. qr.	3 19 24	80	
Same	N. hf. NW	3 19 24	40	10 23
We-sha-te-to-quah	N. hf. NE. qr	10 19 24	80	
Same	SE. qr.	10 19 24	80	
Same	Hf. NE. qr	3 19 24	40	10 23
E-to-E-ke-sick	Hf. NE. qr	10 19 24	80	
Same		10 19 24	80	
13 Same	SE. NW. qr.	10 19 24	160	10 23
Lewis Lefontain	E. hf. SW. qr	31 18 24	80	
Same	W. hf. SE. qr	31 18 24	80	
Same	SE NE. qr	31 18 24	40	10 23
Ozan-dacke	E. hf. SW. qr	18 18 24	80	
Same	N. W. SE. qr	18 18 24	40	
Same	Lot 5	18 18 24	46	
Same	Lot 6	18 18 24	46	10 81
Estes Lafontain	E. hf. NW.	31 18 24	80	
Same	Lot 2	31 18 24	44	
Same	Lot 3	31 18 24	45	
Mary Lafontain	Lot 4	31 18 24	45	10 94
Same	W. hf. NW. qr	28 18 24	80	
Same	S. hf. NE. qr.	29 18 24	80	
Lewis Lafontain	SE. NW. qr.	29 18 24	40	10 23
Same	N. hf. NW. qr.	29 18 24	80	
Same	E. hf. SE. qr	30 18 24	80	
Wa-ha-como-quoh	SW. SE. qr.	30 18 24	80	10 23
Same	NE. SE.	18 18 24	40	
Same	Lot 3	18 18 24	48	
Wan-so-peah	Lot 4	18 18 24	85	
Same	S. hf. SW. qr	33 18 24	80	
Same	SW. SE. qr.	33 18 24	40	
Same	SE. SE. qr.	32 18 24	40	
A. Demo	NE. NE. qr.	5 19 24	40	10 36
Same	Pt. W. hf. NE.	32 18 24	60	
Wa-pin-se-cop-woh	NW. NE. qr.	23 18 24	40	5 11
Same	Hf. SW. qr	28	80	
Same	Hf. SE. qr	29		
Lemon Gebo	SE. SE. qr		40	10 23
Same	Hf. SE. qr	28 18 24		
Same	SE. SW. qr.	28 18 24	40	
Same	SW. SW. qr.	27		
Pen-yoe-tom-wa	SE. qr.	33		10 23
Same	S. hf. NE. qr.	32	80	
Same	S. hf. NW. qr.	32 18 24	80	
Eli Honeywell	SW. NE. qr.	33 18 24	40	10 23

Miami Indian lands.—Continued.

Eli Honeywell	E. hf. SW. qr	30	8	
Same	Lot 3		44	
Same	Lot 4		45	
Wa-pon-ze-quah	E. hf. SW. qr.	29	80	
Same	E. hf. SW. qr.	32		
Same	NW. NW. qr.		40	10 23
Ely Honeywell	Lot 1		44	10 87
San-man-ye-ah	S. hf. SE. qr	32	80	
Same	N. hf. SW. qr.	33		
Same	NW. SE. qr		40	10 23
Same	SW. NW	32		
Wah-pe-mon-go-qua	NE. SE. qr	31		
Same	E. hf. NE. qr.		80	
Same	NW. NE. qr		40	10 28
Same	Pt. NW. NW	22	25	1 25
James Gebo	Pt. SW. qr	15 18 24		
Nill A. Herman	Pt. SW. qr	22	75	3 83
Same	E. hf. NW. qr.	20	80	
Chin-qui-sah	NW. NW. qr		40	
Same	E. hf. SW. qr.		80	10 23
Same				
14 Wash-o-cono-quo	Hf. SW. qr			
Same	SW. NW. qr		40	
Same	S. hf. SE. qr	19	80	10 23
Margred Richardvills	SE. SW	19 24	40	
Same	Lot 4		45	
Same	Lot 6	24 23	40	
Same	Lot 7		30	
Same	Lot 8		21	
Same	Lot 1	26 23	37	10 49
Re-pah-num-wek	NW. SW	14 19 23	40	
Same	N. hf. NW		80	
Same	S. hf. SW. qr	11		9 05
Go-to-cop-wa, jr.	E. hf. SW	9		
Same	N. hf. NW	16		
Same	NW. SW. qr		40	16 17
Now-e-da-ko-shmys	NE. NW	20 18		
Same	S. hf. NW		80	
Same	Lots 4 and 11	17	72	9 46
Kis-ke-ko-quah	N. hf. SE. qr	13	80	
Same	Lots 5 and 7		117	9 46
Martha Hogart	Lots 4, 5, 6, 12	18 18 23	190	12 34
Wa-we-ke-qua	Lot 4	16	61	
Same	Lot 5		54	
Same	Lot 11		40	
Same	Lot 12			
Tob-she-ne-quah	W. hf. NE	36	80	9 32
Same	E. hf. NW. qr			
Same	NW. SE. qr		40	9 57
Kisko-valleges wife	NW. NW	20	40	
Same	Lot 3	17	77	
Same	Lot 9		57	
Same	Lot 10		31	9 32
Chin-com-e-qua	Lot 6	26	36	
Same	Lot 7		40	
Same	Lot 9		44	
Same	Lot 13		31	
Same	Lot 14		27	
Same	Lot 15		30	9 94
Le-ne-quah	W. hf. NW. qr	36	80	
Same	N. hf. NW. qr		80	
Same	SE. NE. qr	35	40	9 57

Miami Indian lands.—Continued.

Wah-che-ke-to-quah	NW. SE	14	40	
Same	Lots 3		58	
Same	Lots 6		25	
Same	Lots 9		79	9 64
Chop-pon-do-sook, jr	SE. SW.	14 18 23	40	
Same	E. hf. NW.	23 18 23	80	
Same	E. hf. SW	23 18 23	80	9 59
Bop-pan-e-quch	NW. NW.	24 18 23	40	
Same	SW. NW. qr	24 18 23	40	
Same	NW. SW. qr	24 18 23	40	
Same	Lot 3	24 18 23	33	
Same	Lot 8	13 18 23	13	
Same	Lot 3	14 18 23	34	9 57
Wa-pan-ge-qua	SE. SE. qr	22 18 23	40	
Same	Lot 1	27 18 23	57	
Same	Lot 3	26 18 23	58	
Same	Lot 4	26 18 23	47	9 64
15 Woh-pe-mon-que	W. hf. SW	23 18 23	80	
Same	W. hf. NW.	23 18 23	80	
Same	Part SW	14 18 23	40	9 57
Noh-wan-quan-was	SW. SE. qr.	14 18 23	40	
Same	E. hf. NE. qr.	23 18 23	80	
Same	NE. SE. qr.	23 18 23	40	
Same	Lot 1	23 18 23	39	9 47
Mone-ke-qua	W. hf. NE.	23 18 23	80	
Same	W. hf. SE. qr.	23 18 23	80	
Same	Lot 2	26 18 23	33	9 32
Sho-como-o-quah	Lot 3	13 18 23	79	
Same	Lot 4	13 18 23	79	
Same	Lot 6	13 18 23	18	
Same	Lot 4	14 18 23	10	
Same	Lot 5	14 18 23	10	9 37
La-pe-ze-quah	E. hf. NE. qr.	36 18 23	80	
Same	S. hf. SE qr	36 18 23	80	
Same	NE. SE. qr.	36 18 23	40	9 57
Little Doctor, dec'd	N. ½ NE.	25 18 23	80	
Same	NE. NW. qr.	25 18 23	40	
Same	SW. NE. qr	25 18 23	40	
Same	Lot 1	25 18 23	39	9 51
Wa-pa-ke-guak	W. hf. NE.	15 19 23	80	
Same	E. hf. NW.	10 19 23	40	9 57
Same	SW. SE. qr.	19 18 23	40	
Samuel Baptiste	SW. NW. qr.	19 18 23	40	
Same	SE. NW. qr	19 18 23	28	
Same	Lot 2	19 18 23	34	
Same	Lot 3	19 18 23	37	
Same	Lot 4	19 18 23	6	
Same	Lot 5	19 18 23	19	
Same	Lot 11	19 18 23	80	12 90
Mark Pascol	S. hf. NE. qr.	19 18 23	40	
Same	NW. SE. qr.	19 18 23	39	
Same	Lot 1	18 18 23	25	
Same	Lot 9	18 18 23	6	12 22
Same	Lot 13	14 19 23	80	
Ma-toh-quen-sa-quah	SE. SE.	14 19 23	80	
Same	W. hf. NE. qr	14 19 23	80	9 57
Same	NW. SE qr.	9 19 23	80	
Wansopeach	E. hf. SW. qr	9 19 23	80	
Same	E. hf. NW	9 19 23	40	15 17
Same	NE. SW. qr.	25 18 23	80	
Po-com-ge-quah	S. hf. NW. qr.	25 18 23	136	10 30

Miami Indian lands.—Continued.

Po-com-ge-quah	Lots 2, 6. 8	9 19 23	80	
Woh-no-com-oqau	E hf. SE	16 19 23	80	
Same	E. hf. NE qr	15 19 23	40	9 57
Same	SW. NW. qr	14 19 23	80	
Sok-ka-cha-guoh	E. hf. NW	14 19 23	80	
Same	E. hf. SW. qr	14 19 23	4	9 57
Same	SW. SW. br	25 18 23	80	
Kill-so-quah	N. hf. SE. qr	25 18 23	52	
Same	Lot 3	25 18 23	51	
Same	Lot 4	25 18 23	12	9 32
Same	Lot 5	27 18 23	49	
No-non-ge-quah	Lots 2 and 4	26 18 23	147	9 32
Same	Lots 5, 10, 11, 12	21 88 23	80	
Po-com-dem-ah	W. hf. NW	17 88 23	75	
Same	Lots 5, 6, 7	16 88 23	45	9 57
Same	Lot 9	18 88 23	77	
Amanda Paschal	Lot 3	11 88 23	80	
Same	Lot 8	11 88 23	39	12 60
Same	Lot 10	35 88 23	80	
In-de-he-ne-quah	N. hf. NE	35 88 23	80	
Same	N. hf. SE. qr	35 88 23	4	9 57
Same	SW. NE. qr	35 88 23		
16 Nah-mo-lon-guk	NE. SW. qr	24 88 23	4	
Same	SE. NW. qr	24 88 23	4	
Same	Lots 9, 10, 11	24 88 23	123	9 69
Ro-che-som-e-de	Lot 2, NE	14 88 23	54	2 73
Baptiste Pevria	E. hf. SE. qr	12 88 23	80	3 82
Marcus Senslug	Lot 1, NE	13 88 23	80	
Same	Lot 2, NW	13 88 23	80	
Same	Lot 1, NE	14 88 23	20	8 61
Ne-wa-ke-shah	SE. NE. qr	12 88 23	40	
Same	W. hf. SE	12 88 23	80	
Same	SW. qr	12 88 23	160	
Same	Lot 13	11 88 23	22	
Same	Lot 10, SE	11 88 23	19	14 35
Ke-kan-ke-to-quah	NW. qr	33 88 23	160	
Same	NE. qr	33 88 23		
Same	SW. qr	2 88 23	160	22 96
Wm. Blackleg	SW. qr	2 88 23	160	7 38
Sna-lo-le	SW. qr	3 18 23	160	
Same	S. hf. SE. qr	3 18 23	80	1 48
Baptiste Pevria	N. hf. SE. qr	3 18 23	80	4 82
Sim Bander	S. hf. SE. qr	9 18 23	80	
Same	Lot 7, SW. qr	10 18 23	32	5 35
Me-go-to-kop-wa	Lot 6, SW	10 18 23	26	
Same	Lot 5	10 18 23	40	
Same	NE. SE. qr	9 18 23	40	
Same	NW. SE. qr	9 18 23	40	
Same	NE. SW. qr	9 18 23	40	
Same	NW. SW. qr	9 18 23	40	
Same	SE. NW. qr	9 18 23	40	12 72
Daniel Boon	E. hf. SE	10 18 23	80	
Same	Lot 4, SE. qr	10 18 23	22	
Same	Lot 9	10 18 23	40	
Same	Lot 8, SW	10 18 23	40	
Same	NW. SE. qr	10 18 23	40	10 62
Daniel Gebo	E. hf. NE. NW	32 18 23	20	
Same	N. hf. NW	33 18 23	80	4 88
Pa-kan-quah	SE. qr	8 18 23	160	
Same	Lot 2, NW	16 18 23	82	
Same	Lot 1, NE	16 18 23	81	

Miami Indian lands.—Continued.

Pa-kan-quah	Lot 3, NW	15 18 23	.29	
Same	Lot 2, NW	15 18 23	45	
Same	Lot 1, NE	17 18 23	82	22 91
Pelana-kar-pa-pa	Lot 7, NE	11 18 23	23	
Same	Lot 8	11 18 23	49	
Same	Lot 11, SW	11 18 23	54	
Same	Lot 12	11 18 23	51	
Same	Lot 3, NW	11 18 23	11	
Same	Lot 4	11 18 23	22	
Same	Lot 5	11 18 25	52	
Same	SE. NE. qr	11 18 23	40	
Same	SE. 6, NE	11 18 23	26	15 68
Peter Clouds	NW. qr	10 18 23	160	
Same	NE. qr	9 18 23	160	
Same	Lot 1, NE. qr	10 18 23	38	
Same	Lot 2	10 18 23	43	
Same	Lot 3	10 18 23	28	
Same	NE. NE	10 18 23	40	22 41
17 Jack-ke-ko-quah	NE. NW. qr	9 19 24	40	
Same	N. hf. NE. qr	9 19 24	80	
Same	SE. NE. qr	9 19 24	40	
Same	SE. SE. qr	4 19 24	40	9 57
Sho-mal-com-o-quah	SW	32 18 24	160	
Same	SE. SE. qr	31 18 24	40	9 57
Poh-co-choh	SE. qr	17 18 24	40	
Same	SE. NE. qr	17 18 24	40	9 57
Shoh-co-shoh	SE. qr	7 19 25	160	
Same	NE. NE. qr	18 19 25	40	9 57
Otta-po-quah	SE. qr	9 19 25	160	
Same	NE. NE. qr	16 19 25	40	9 57
Marcellus	SW. qr	15 19 25	160	
Same	SW. SE. qr	16 19 25	40	9 57
Ola-mah-soh-cooh		8 19 25	160	
Same	NE. NE. qr	17 19 25	40	9 57
Madaline	SW. qr	8 19 25	160	
Same	NW. NW qr	17 19 25	40	9 57
Rattas	W. hf. NE. qr	18 19 25	80	
Same	E. hf. NE qr	18 19 25	80	9 57
Same	SW. NW. qr	18 19 26	40	

And the plaintiffs further say that the assessment and levy of taxes, as in said list contained, upon said lots and tracts of land and the sale thereof for the non-payment of taxes levied thereon are and the same will be, if such sale be made as in said advertisement mentioned, illegal and void. And the plaintiffs further say that the assessment of such taxes upon the said lands and tracts of land have wrought them, and all others of the said tribe of Miami Indians owning any of the said tracts of land, and in whose behalf, as well as that of the plaintiffs this action is brought, great injury; and they further aver
18 that said treasurer will, if not restrained by injunction, proceed to sell, and will sell, as set forth in said advertisement, the said tracts of land, and such sale, if made, will work great and irreparable injury and injustice to the said tribe of Miami Indians, and to all and several the owners of said tracts of land, in this, that they are by said treaty restrained from a free sale of their said lands, and by such sale for taxes a cloud and encumbrance will be cast upon

their ownership and titles to the said tracts of land, and the same will by such sale become unsalable to purchasers, and will be liable under the laws of the State to be conveyed away by deeds issued for non-payment of taxes, and their just rights to and titles thereof become and be placed in jeopardy and to utter loss.

And the plaintiffs further say that the subject-matter of this action and the question of this right to tax the said tracts of land so owned by the members of said tribe is of common and general interest to all the owners of said tracts and to all the members of said tribe, and the members of said tribe is more than one hundred persons; and it is impracticable to bring them all before the court in this action.

19 And the plff's say that this action is brought by the plff's for the benefit of all other owners of said tracts and of the members of said tribe as well as for themselves, with the advice, consent of such owners and members.

And the plaintiffs further say that all and each of said tracts of land are owned in severalty by members of said tribe or the families thereof, and lie and are situate in the county of Miami aforesaid. The plaintiffs further say that the assessment and levy of taxes upon said tracts of land for the year 1863, and all proceedings thereon are utterly irregular, deficient, and void.

The plaintiffs therefore, in behalf of themselves and of all other persons members of said tribe of Miami Indians, owning in severalty or by heads of families, and of the tracts of land in the foregoing list contained, and having a common interest with the pl'ffs in this action and in the question involved therein of the power to tax such tracts of land, pray for the order of injunction to be issued against the defendants, and each of them, as follows: against the board of said county commissioners, restraining them from levying any taxes or tax upon any of said tracts of land, and from all other acts and things towards the collection thereof and against the said Thomas Akers, treasurer, de-

20 fendant, constraining and prohibiting him from selling said tracts of land, and each and every of them, for the non-payment of tax or taxes levied thereon for the year 1863, as set forth in the list and advertisement aforesaid or otherwise, either on the said first Tuesday of May, 1864, or on any other day and time; and that the said treasurer shall wholly refrain from selling said tracts of land in manner aforesaid until the further and other order of the court, and against the said Daniel Childs, county clerk, restraining him from executing, issuing, or delivering any tax deed in the name of this county or otherwise of any of said tracts of land, and the pl'ffs pray, for themselves and others as aforesaid, that on the first hearing of this action the said orders of injunction may be made final and perpetual, and that the said district court shall decree that the assessment and levy of said tax of 1863, levied upon said tracts of land, are and shall be utterly null and void, and shall be taken for nothing, and the pl'ffs pray for such other and further relief as equity and good conscience may require.

BROWN & CO., *Attorneys for Pl'ffs.*

STATE OF KANSAS, *County of Miami, ss:*

Wan-zop-e-ah, We-te-sen-yah, Go-to-cop-wah, E-taw-we-he-sick being duly sworn, on oath say that they are plaintiffs in the
21 above petition, that they are acquainted with the contents of the same, and that the said petition and the averments thereof are true.

WAN-ZOP-E-AH, his + mark.
WE-TE-SEN-YAH, his + mark.
GO-TO-COP-WAH, his + mark.
E-TAW-WE-KE-SICK, his + mark.

Subscribed and sworn to before me, this 2d day of May, 1864.
J. J. BANNISTER, *Clerk.*

Præcipe for summons.

In the district court sitting in and for the county of Miami, State of Kansas.

WANZOPEAH, WETOZENYOH, GOTOKOPWOH, Etawwekesick, who institute and bring this action as well for themselves as for the whole of the members of the Miami tribe of Indians, of the State of Kansas, pl'ffs,

vs.

THE BOARD OF COUNTY COMMISSIONERS OF the county of Miami, Thomas Akers, treasurer of said county of Miami, State of Kansas, and Daniel Childs, county clerk of said county, defendants.

The clerk of said court will issue a summons in the above action, directed to the sheriff of Miami county and indorsed by the words, injunction allowed.

BROWN & CO., *Attorneys for Pl'ffs.*

22 And thereupon an order of injunction was granted by the judge of the probate court of said county of Miami and State of Kansas, of which said order the following is a copy:

District court, Miami county, docket entry.

WAN-ZOP-E-AH, WE-TE SEN-YAH, GO-TO-COP-wah, E-tan-we-ke-sick, who institute and bring this action as well for themselves as for the whole of the members of the Miami tribe of Indians of the State of Kansas, plff's,

against

THE BOARD OF COUNTY COMMMISSIONERS OF Miami county and Thomas Akers, treasurer, and Daniel Childs, clerk of Miami county, defendants.

On application of the said plaintiffs, by their attorneys, Brown &

Coe, for an injunction, and upon their finding the petition duly verified, on consideration whereof it is ordered that an injunction issue in this case against each of the said def'ts, as prayed for in said petition, on the plff's giving their undertaking to the said defendants to the clerk of this court in the sum of $3,000 00.

Done by the probate judge of Miami county, the judge of the district court being absent from the county, this 2d day of May, 1864.

D. B. WILSON,
Probate Judge.

23 And thereupon the following bond was filed and approved, to wit:

Know all men by these presents, that Wan-zop-e-ah, We-to-sen-yoh, and Baptiste Peoria, and Tom Rodgers, G. W. Brown, are held and firmly bound unto the board of county commissioners of Miami county, Thomas Akers, treasurer, and Daniel Childs, clerk of Miami county, in the sum of three thousand dollars, lawful money of the United States, to be paid in lawful money of the United States. The condition of this obligation is such, that whereas a suit has been commenced in the district court of Miami county, by Wanzopeab, Wetosenyoh, Gotocopwoh, Etonwesick, who institute and bring the action as well for themselves as for the whole members of the Miami tribe of Indians of the State of Kansas, against the board of county commissioners of Miami county, and Thomas Akers, treasurer, and Daniel Childs, clerk of the county of Miami aforesaid; and whereas an order of injunction has been allowed in said action to restrain the sale of certain lands in said petition described, for the payment of taxes, and lands have been required in the sum of three thousand dollars to secure the defendants against all damages they may sustain if it finally decided that the injunction ought not to have been
24 granted: Now, therefore, the condition of this obligation is such, that if the said obligors shall pay all damages which the defendants may sustain, in case it is finally decided that the injunction ought not to have been granted, otherwise to remain in full force and vistue.

WAN-ZOP-E-AH. his + mark.

WE-TO-SEN-YOH. his + mark.

BAPTISTE PEORIA. his + mark.

TOM ROGERS. his + mark.

G. W. BROWN.

Bond filed and approve this 2d day of May, A. 1864.

T. J. BANNISTER, *Clerk.*

And on the said præcipe the following summons was issued, viz:

Summons for district court.

STATE OF KANSAS, *County of Miami, ss:*

The State of Kansas, county of Miami, to the sheriff of Miami county, greeting:

You are hereby commanded to notify the board of county commissioners of Miami county, Thomas Akers, treasurer, and Daniel Childs, clerk of said county, that they have been sued by Wan-zop-e-ah, We-to-sen-yoh, Go-to-cop-wah, E-taw-we-ke-sick, who institute and bring this action as well for themselves as the whole of the members of the Miami tribe of Indians of the State of Kansas, in the
25 district court, fourth judicial district, State of Kansas, sitting within and for the county of Miami, and that they must answer the petition filed against them in the clerk's office of the said court on or before the 2d day of June, A. D. 1864, or such petition will be taken as true and judgment accordingly.

You will make due return of this summons on or before the 13th day of May, A. D. 1864.

Witness my hand and the seal of the said court of Miami, this 3d day of May, A. D. 1864.

[SEAL.] T. J. BANNISTER, *Clerk.*

Indorsed: Suit brought to sustain injunction. Injunction allowed. Bond of indemnity filed and approved.

T. J. BANNISTER, *Clerk.*

Said summons was duly returned, to wit:

Filed May the 4th, 1864.

Indorsed: Received the within summons the 3d day of May, A. D. 1864, at 4 o'clock p. m., and executed the same this 3d day of May, A. D. 1864, by giving certified copy to Daniel Childs, clerk of board of county commissioners, Thomas Akers, treasurer of Miami county, and Daniel Childs, clerk of said county.

(Signed) W. P. DUTTON,
Sheriff Miami County.

26 And thereupon afterwards, to wit, on the 2d day of June, A. D. 1864, the following demurrer was filed, to wit:

Demurrer.

THE STATE OF KANSAS, *Miami County, ss:*

Fourth district court for said county.

WAN-ZOP-E-AH, ME-TO-SEN-YOH, GO-TO-COP-WAH, E-tan-we-ke-sick, plff's,
vs.
THE BOARD OF COUNTY COMMISSIONERS OF MIAMI county, and Thomas Akers, treasurer of said Miami county, in the State of Kansas, and Daniel Childs, county clerk of said county, defendants.

The defendants say they demur to the petition because said petition does not state facts sufficient to constitute a cause of action.

W. R. WAGSTAFF,
Att'y for Def'ts.

And afterwards, to wit, on the 29th day of July, A. D. 1864, the following amendment to petition was filed, viz:

In the district court sitting in and for the county of Miami, State of Kansas.

27 *Amendments to petition for injunction.*

WANZOPEAH, METOSENYOH, GOTOCOPWAH, E-ton-we-ke-sick, *et al*, plaintiffs,
vs.
THE BOARD OF COUNTY COMMISSIONERS OF THE county of Miami, Thomas Akers, treasurer of said county, in the State of Kansas, and Daniel Childs, county clerk of said county, defendants.

The plaintiffs amend their petition heretofore filed in this action as follows, that is to say: Immediately before the list of lots and tracts of land contained in said petition and immediately after the words "an advertisement and list of tracts of lands in said county, with the sums of taxes levied upcn each tract, of which the following advertisement and list is a copy, that is to say," insert the following words to wit: List of delinquent lands on which the taxes remain unpaid for the 1863, which will be sold for the taxes and charges on the 1st Tuesday of May, unless paid before that day; also immediately after the said list of lands, insert the words following, to wit:

Thomas Akers, treasurer Miami county, Kansas.
Paola, Kansas, April 1st, 1864.

28 And the plaintiffs further say that the above amendments asked to be inserted in the original petition in this action were contained in and a part of the advertisement and list of lots in said petition referred. And that said Thomas Akers, as treasurer, did, on the first of April, 1864, advertise in the said newspaper, the Union Crusader, that he would on the 1st Tuesday of May, 1864,

sell the lands described in said list in case of non-payment of the tax of 1863, levied thereon as in said advertisement set forth. And plaintiffs further say that the 1st perpendicular column of figures at the right hand of each column containing the description of the said several lots and tracts of land represent the number of the section of land respectively. And the 2nd column of figures represent the number of the township respectively. And the 3d column of figures represent the number of ranges respectively. And the 4th column of figures represent the number of acres of land respectively. And the 5th column of figures represents the sum of money in dollars and cents respectively, for which each tract opposite and at the left hand of the same would so be sold for taxes as aforesaid. The first left hand column contains the names of the owners, and the 2d column, the descriptions of the tracts of land so conveyed to said
29 owners in severalty.

BROWN & COE, *Plaintiffs' Att'ys.*

STATE OF KANSAS, *County of Miami, ss:*

John M. Coe, being duly sworn, on oath says, that the amendments and facts contained in the above and foregoing amendments to the original petition filed in the above-entitled action are true.

JOHN M. COE.

Subscribed and sworn before me, this 29th day of July, 1864.

T. J. BANNISTER, *Clerk.*

Indorsed: Service of notice acknowledged, and copy waived, and consent of filing of same, July 29th, 1864.

W. R. WAGSTAFF,
Attorney of Def'ts.

Filed July 29th, 1864.

T. J. BANNISTER, *Clerk.*

And afterwards, to wit, on the 11th day of August, the following amendment was filed to wit:

Amendments to petition.

In the district court for Miami county, Kansas.

WAN-ZOP-EAH, WE-TO-SEN-YOH, GO-TO-COP-wah, E-taw-we-ke-sick, who institute and bring this action as well for themselves as for the whole of the members of the Miami tribe of Indians of the State of Kansas, plaintiffs,

30 *vs.*

THE BOARD OF COUNTY COMMISSIONERS of Miami county, Thomas Akers, treasurer of said county of Miami, and Daniel Childs, clerk of said county, defendants.

The plaintiffs ask to amend their petition filed in this action by the

following allegations, to be inserted immediately before the prayer for injunction and relief in the original petition, that is to say, the allegations following, to wit:

And the plaintiffs further say that the said Miami tribe of Indians are now and have always been since the settlement upon the lands secured to them by the treaty aforesaid of the 5th day of June, 1854, and before their removal to and occupancy of said lands, an independent nation, and as such nation have always and now do maintain their tribal relations with the United States as such independent nation, they have with the sanction of the United States reserved their separate and distinct organization as a tribe, and their councils, lawfully elected according to the customs and usages of the tribe, have regulated the local and domestic affairs of the nation, and have governed the nation as an independent people; and the said nation now does and claims to maintain such their independency aforesaid, with all customs, usages, privileges, franchises, and rights of property and person appertaining thereto, subject only to the general supervision of the United States, according to the laws and ju-
31 dicial decisions thereof; and that in such independent nation, they have concluded treaties with the United States, and by them have always been and now are recognized as such independent nation, and all their rights and privileges aforesaid have by the said United States been and now are recognized and protected.

And the pl'ffs further say that the lands aforesaid so assigned and patented as aforesaid, constitute the territory of said tribe so occupied *so occupied* by them as an independent nation. And the pl'ffs further say that they have never acted to the United States, nor to the State of Kansas, any rights of person or property so recognized by the United States, except as is set forth in the said treaty of June 5th, 1854, nor have said Miamis, as a nation or as individuals, nor any of the plaintiffs or those for whose benefit this action is brought, surrendered any franchise appertaining to their lands, or consented that they should be under the political or municipal jurisdiction of the State of Kansas, or subject to the disposal and regulations or taxations thereof.

BROWN & COE, *Att'ys.*

STATES OF KANSAS, *County of Miami, ss:*

32 Baptiste Peoria being duly sworn, on oath says that he is acquainted with the matters above set forth, and that the facts contained in the foregoing amendment to the petition in this action, are true.

his
BAPTISTE + PEORIA.
mark.

Subscribed and sworn before me, this 8th day of August, 1864.
T. J. BANNISTER, *Clerk.*

These amendments are filed by consent as part of original petition, all objections raised to them as to time of filing and want of notice thereof, it is also stipulated that the demurrer heretofore filed shall apply to and be heard on the petition and amendments in the action, and all objections to the time of filing waived.

W. R. WAGSTAFF,
Att'ys for Def'ts.
BROWN & COE,
Atty's for Pl'ffs.

And afterwards, to wit, at the September term, 1864, the following action was had, to wit:

WAN-ZOP-E-AH *et al.*, pl'ffs,
vs.
BOARD OF COUNTY COMMISSIONERS *et al.*, defendants.

33 And this day comes the parties by their attorney, and this cause coming on for hearing, the def't ask leave to withdraw demurrer and to answer, whereupon it is excepted to by plaintiffs' att'y.

It is considered by the court that the pl'ff in this action have leave to amend petition within fifty days from the rising of this court, and that defendant have leave to answer within twenty days thereafter.

And this cause do stand continued.

(Signed) SOLON O. THACHER, *Judge.*

And afterwards, to wit, on the 25th day of March, A. D. 1865, in the said court the following order was made to wit:

YELLOW BEAVER *et al.*, pl'ffs,
vs.
BOARD OF COUNTY COMMISSIONERS *et al.*, def'ts.

On motion it is ordered that this cause be continued until court in course, and that the def't have leave to amend answer within forty days from the close of this term of court, and the plaintiffs have leave to reply within twenty days thereafter, and that a copy of answer be sent to Wilson Shannon, attorney and counsellor at law.

Approved.

(Signed) S. D. M. VALENTINE, *Judge.*

And afterwards, to wit, on the 8th day of May, A. D. 1865, the following answer was filed, viz:

34 *Answer.*

In the district court sitting in and for the county of Miami, State of Kansas.

WAN-ZOP-EOH, ME-TO-SEN-YOH, GO-TO-COP-WAH, E-taw-we-ke-sick, who institute and bring this action as well for themselves as for the whole of the members of the Miami tribe of Indians, of the State of Kansas, plaintiffs,

vs.

THE BOARD OF COUNTY COMMISSIONERS OF THE county of Miami, and Thomas Akers, treasurer of said county of Miami, in the State of Kansas, and Daniel Childs, county clerk of said county, defandants.

1st. The defendants, in answer to the petition of the pl'ffs, deny each and every allegation in said petition set forth, except the levy and the assessment of taxes on said lands, and so much of said petition as is expressly admitted in this answer.

2d cause of defence. The def'ts aver that the lands in said petition described are not held by said plaintiffs in their tribal relation,
but as head rights of the individual members of said tribe;
35 that under the 1st and 2d articles of the treaty concluded on the 5th day of June, 1854, by the commissioner on the part of the United States and certain delegates of the Miami Indians, the said Indians ceded to the United States all the lands described in the 1st article of the said treaty, which cession included the lands in said petition described; and under the 2d article of said treaty, each individual or head of a family of the Miamia tribe then residing on said lands, were authorized to select, if a single person, 200 acres, if the head of a family, a quantity equal to 200 acres for each member of the family; and it appears by a return, dated about the 18th day of April, A. D. 1859, from the Commissioner of Indian Affairs made to the General Land Office, accompanied by Miami Reservation Book A, appears that about the 16th day of April, A. D. 1859, the selection so made for the reserves the Secretary of the Interior approved. That on or about the 5th day of November, A. D. 1859, patents issued from the United States to said reserves for the selections made in pursuance of the provisions of said treaty upon the condition as prescribed by the Secretary of the Interior, under the provisions of
the 11th section of the act of Congress approved March 3d,
36 1859, (U. S. Statutes, vol. 11, page 430;) and soon after said patents were so issued, and before the assessment of taxes on said lands by said def'ts in pursuance of the laws of the State of Kansas, as said patents were delivered by the United States to said reservees.

2d. All the lands in said petition described as belonging to said reservees and held by patents issued and delivered to them by the United States, and all of said described lands are situated in the

county of Miami, in the State of Kansas; and the holders of said patents are residents, citizens of said county and State, and transact business therein.

The patents issued as aforesaid to said reservees, gives and grants to such reservees, and to their heirs, the lands respectively in said patents described, and by virtue thereof such reservees possess and hold said lands in fee simple. The defendants aver that the reservees and the lands held by them respectively, are not considered under the laws of the United States, nor subject to any restriction therein prescribed; nor any conditions of sale prescribed in any such conveyance, but are liable to assessment, levy, and sale for taxes under the laws of the State where such lands are situated.

3d. The restrictions and conditions mentioned in the second article of said treaty, and the conditions prescribed by the Secretary
37 of the Interior under the provisions of the 11th section of the act of Congress approved March, 1859, (U. S. Statutes, vol. 11, page 430,) are personal, and do not exempt the said described lands from the operation of the State laws. The said act of Congress only creates the Secretary of the Interior an agent for the reservees, to aid them in making conveyances of the lands prescribed by them, of the United States under said treaty stipulations.

3d cause of action. And for a third cause of action the defendants say:

1st. That individual reservees of the Miami tribe of Indians are divided into two classes, those who are and those who are not included within the boundaries of their tribal relations. The former are inalienable except Indians by birth, members of the tribe to which the reservee belongs, the latter are alienable; to all of the latter class of Miami Indians patents have issued by the United States to the reservees and to his or their heirs. That Miami Reservation Book A, on file in the office of the U. S. Indian agent at the Osage river agency, furnishes an official and complete description and exemplication of selections and alotments of land made for the members of the Miami tribe of Indians in the State of Kansas, and of the reservation for school purposes, and the reservation of
38 the residue of the 70,000 acres for the common benefit of said tribe, as provided by the first and second articles of the treaty of June 5th, 1854. That no part of the lands described in said petition are included in the reservation for school purposes, and no part of the reservation of 70,000 acres for the benefit of said tribe; and no part of said reservation named have ever been assessed or levied upon for taxes by the def'ts under the laws of the State.

2d. That the estates of deceased Indians having held rights under said treaty and residing within the State, are settled according to the laws of this State; and lands of which any such reservee may die seized, descend according to the laws of this State, and said estates are not settled and said lands do not decend according to the tribal customs of said Indians.

3d. Before the commencement of this action, a great number of the Indians, individual reservees of the Miami tribe who had made

selection under the treaty, and to whom patents issued by the United States, have died in said county of Miami, Kansas, and letters of administration have never been issued on their estates according to the laws of this State, and that said deceased Indians are wholly unrepresented by the Miami Indians in the tribal relations; that the names of said deceased Indians and the lands of which they died seized, with a full description of such lands, and the quantity
39 of which each so died seized, are hereto attached, marked A, and made a part of this answer.

3d. The defendants aver that the pl'ffs cannot maintain their said action for and in behalf of the estates of the dead members of the said Miami tribe of Indians, letters of administration have never been granted to any person on the estates of said deceased Indians. The debts and liabilities of said deceased Indians have not been paid, and it does not appear that the personal assets of said decedents are deficient to pay the same; the lands of said decedents are liable under the laws of this State for the payment of their debts, and a judgment cannot be entered up for or against decedents without an administrator duly appointed to represent the estate of said deceased persons; and that so far as the interest of the deceased plaintiffs are concerned in this action, that the same ought to be dismissed.

4th cause of action. And for a 4th cause of defence the defendants say:

1st. That persons pretending to be members of the Miami tribe of Indians have received from the United States for individual head rights under the said treaty, amounting in the aggregate to 14,000 acres of land; that at the time of making the treaty of June the 5th, 1854, these supposed Miami Indians were residents and citizens of the State of Indiana, and were not then and never have since that time
40 been residents and citizens of Kansas, nor have all or any portion of them, since the 5th day of June, 1854, ever been members of the Miami tribe of Indians in Kansas, and do not hold themselves in any way subject to, or under the control of, the Miami Indians, in their tribal capacity; 488,854 acres of the land so patented by the United States under said treaty to said Miami Indians, of Indiana, and situated in the county of Miami, in the State of Kansas, and a portion of the lands assessed and levied upon by the defendants under the laws of this State. 2d. That the description and allotments of said so made for certain Miami Indians of Indiana within the Miami reservation in Kansas, as provided by the 3d sec. of the act of Congress, entitled An act making supplemental appropriations for the current and contingent expenses of the Indian department, and for fulfilling treaty stipulations with various Indian tribes for the year ending June 30th, A. D. 1859, approved June 12th, 1858, (U. S. Statutes at Large, vol. 11, page 332,) and set forth and described, as also the names of the individuals to whom the allotments were made in Miami Reservation Book B, on file in the office of the United States Indian agent for the Osage river agency. A list of the names of the said reservees, and the descriptive quantities

of land owned by them respectively in Miami county, Kansas,
41 and hereto attached, marked B, and made a part of this answer.
3d. Lands in Kansas held in fee by patents from the United States, by persons residing in the State of Indiana, claiming to be Miami Indians, are not for the purposes of taxation to be considered under the laws of the United States, nor to be exempt from such taxation by reason of any conditions expressed in said patents exempting said lands from the operations of the State laws. 4th. Under the operations of the provisions of the first article of the treaty of June 5th, 1854, the United States become the absolute owner of all the lands therein bounded and described, which described lands includes all patented to the pretended Miami Indians of Indiana, are so held by special grant to them under the said act of Congress, approved June 12th, 1858, and not by virtue of the treaty stipulations of June 5th, 1854, and are not subject to the limitations in regard to sale or forfeiture for taxes as in said treaty set forth.

W. R. WAGSTAFF,
Attorney for Defendants.

Wan-pun-ge-guah died about the year 1859, seized of the E. ½ of S. W. ¼ of sec. 29, (80 acres;) E. ½ of the N. W. of sec. 32, (80 acres;) and the N. W. ¼ of the N. W. ¼ of sec. 32, (40 acres;)
42 all in township 18 south, range 24 east, containing *containing* in the aggregate 200 acres.

W-fan-de-ah died March 23d, 1860, seized of the E. ½ of the S. W. ¼ fr. of section 18; the N. W. ¼ of S. E. ¼ of sec. 18; lot No. 5 in sec. 18; lot No. 6 in sec. 18, in township 18 south, range 24, containing 212 acres.

Kil-so-qu-ah died in 1859, seized of the N. ½ of S. E. pr. ¼ of sec. 25; lot No. 3 in sec. 25; lot No. 4 in sec. 25; lot No. 5 in sec. 25; total 196.16 acres, all in township 18 of range 23.

Pin-ge-chin-o-guah died in 1858, seized of the S. E. ¼ of the N. E. ½ of sec. 25, in township 18 of range 23, (40 acres;) the E. ½ of the N. W. ¼ of sec. 30; lot 1 in sec. 30; lot 2 in sec. 30, in township 18 of range 24, containing in the aggregate 209.45 acres.

Ozen-de-quah died in the year 1858 or '59, seized of the N. ½ of the S. W. ¼ of sec. 11; N. ½ of the S. E. ¼ of sec. 11; the S. E. ¼ of the S. E. ¼ of sec. 11, in township 19 of range 24, containing 200 acres.

Keno-yan-yah, or John Godfrey, died in the year 1859, seized of the S. ½ of the S. E. ¼ of sec. 10; S. ½ of the S. W. ¼ of sec. 11; and the S. W. ¼ of the S. E. ¼ of sec. 11, in township 19 south, range 24, containing 200 acres.

Wah-Wah-ke-que-ah died in 1857, seized of lot 4 in sec. 16, (61.70 acres;) lot 5 in sec. 16, (53.50 acres;) lot 11 in sec. 16, (39.90
43 acres;) lot 12 in sec. 16, (40 acres;) in township 18 south, range 23, containing in all 195.10 acres.

Po-con-fo-quah died in the fall of 1860, seized of the N. ½ of the N. E. ¼ of sec. 14; and N. ½ of the N. W. ¼ of sec. 14; N. E. ¼ of the N. E. ¼ of sec. 15, in township 19 of range 24, containing in all 200 acres.

Billy, or Maconsah, died seized of W. ½ of the N. E. ¼ of sec. 16; W. ½ of the S. E. ¼ of sec. 9; S. W. ¼ of the N. E. ¼ of sec. 9, in township 19 of range 23, containing 200 acres.

In-de-yha-no-tah, or Dutchman, died seized of the N. ½ of N. E. ¼ of sec. 35; N. ½ of the S. E. ¼ of sec. 35; the S. W. of the N. E. ¼ of sec. 35, in township 18 S. of R. 23, containing 200 acres.

E-he-te-a-be, or Cabbage, died seized of the S. ½ of the N. W. ¼ of sec. 17; S. W. ¼ of the N. E. ¼ of sec. 17; lot No. 2 of sec. 17; lot No. 3 of sec. 17; all in township 19 south, of range 24 E., containing 200 acres.

Pe-co-she-ah, or French, died seized of N. ½ of S. W. ¼ of sec. No. 8; N. W. ¼ of S. E. ¼ of sec. 8; lot No. 5 in section 7; lot No. 9 in section 7; all in township No. 19 south, of range 24, containing 214.16 acres.

44 Got-a-chin-quah, or Little Doctor, died seized of the N. ½ of the N. E. ¼ of sec. No. 25; N. E. ¼ of the N. W. ¼ of sec. 25; S. W. ¼ of the N. E. ¼ of sec. 25; lot No. 1 in section 25; all in township 18 S. of R. 23 east, containing in the aggregate 199.99 acres.

Lewis Geton, seized of the S. ½ of the S. E. ¼ of sec. 16; S. ½ of the S. W. ¼ of sec. 15; S. W. ¼ of the S. E. ¼ of sec. 15; all in township 19 south, R. 24, containing 200 acres.

Ke-poh-hum-wah, or John Miller, died seized of the N. W. ¼ of the S. W. ¼ of sec. 14; W. ½ of the N. W. ¼ of sec. 14; S. ½ of the S. W. ¼ of sec. 11, containing 200 acres, all in township 19 south, of range 23 E.

Kop-pan-oh-quah died seized of the N. W. ¼ of the N. W. ¼ of pr. sec. 24; S. W. ¼ of the N. W. ¼ of sec. 24; N. W. ¼ of the S. W. frac. ¼ of sec. 24; lot No. 3 in sec. 11; lot No. 7 in sec. 14; all in township 18 south, of range 23 E., containing 200 acres.

Kish-E-Ko-quah died seized of the N. ½ of the S. E. ¼ of sec. 13; lot No. 5 in sec. 13; lot No. 7 in sec. 13; in township 18
45 south, of range 23 east, containing 197.25 acres.

Toor-wan-ge-ah, or Jim Squirrel, died seized of the N. ½ of the S. E. ¼ of sec. 32; N. ½ of the S. W. ¼ of sec. 33; N. W. ¼ of the S. E. ¼ of sec. 33, in township 18 south, of range 24, containing in the aggregate 200 acres.

Sah-ha-cha-quah died seized of the E. ½ of the N. W. ¼ of sec. 14; E. ½ of S. W. ¼ of sec. 14; S. W. ¼ of the S. W. ¼ of sec. 14, in township 19 south, of range 23 east, containing 200 acres.

Thom-ma-com-o-quah died seized of the S. E. ¼ of the S. E. ¼ of sec. 31; and the S. W. ¼ of sec. 32, in township 18 south, of range 24 E., containing 200 acres.

Wah-sah-con-goh died seized of the N. ½ of the N. W. ¼ of sec. 8; N. W. ¼ of the N. E. ¼ of sec. 8; lot No. 1 in sec. 7; lot No. 2 in sec. 7; all in township 19 south, of range 24 E., containing 196.90 acres.

Wah-che-he-lo-quah died seized of the N. W. ¼ of the S. E. ¼ of sec. 14; lot No. 3 in sec. 14; lot No. 6 in sec. 14; lot No. 9 in sec. 14, in township 18 south, of range 23 E., 202.69 acres.

Wan-zop-peah died seized of the S. ½ of the S. W. ¼ of sec. 33; S. W. ¼ of the S. E. ¼ of sec. 33; S. E. ¼ of the S. E. ¼ of
46 sec. 32, in township 18 south, range 22 east; and the N. E. ¼ of the N. E. ¼ of sec. 5, in township 19 south, of range 24 E., containing 201.38 acres.

Wanzoppaoh, or Beaver, died seized of the E. ½ of the S. W. ¼ of sec. 9; E. ½ of the N. W. ¼ of sec. 16; N. E. ¼ of the S. W. ¼ of sec. 16, in township 19 S., of range 23 E., containing 200 acres.

Wah-pe-mon-go-quah died seized of the E. ½ of the N. E. ¼ of sec. 15; E. ½ of the S. E. ¼ of sec. 10, in township 19 south, of range 23, containing 200 acres.

(Linn county.)

No-op-shin-goh died seized of the S.W. ¼ of sec. 28; N.W. ¼ of S.E. ¼ of sec. 28, in township 19, range 24, containing 200 acres.

Exhibit A.

Mo-se-tah died seized of the N.W. ¼ of the N.W. ¼ of sec. 7; the N.E. ¼ of the N.W. fr. ¼ of sec. 7; S.E. ¼ of the N.W. fr. ¼ of sec. 7; N.E. ¼ of the S.W. fr. ¼ of sec. 7; lot No. 3 in sec. 7; lot No. 6 in sec. 7; all in township 19 south, of range 24, containing in all 197.84 acres.

Noon-dah-com-a-quah, or Amanda Paschal, died seized of lots No. 3, lot No. 8, lot No. 10, of sec. 18, in township 18 south, of range 23, containing 196.40 acres.

No-mon-ge-quah died seized of lot No. 2 in No. 27, lot No. 4 in sec. No. 27; lot No. 5 in sec. No. 26; lot No. 10 in sec. 26;
47 lot No. 11 in sec. 26; lot 12 in sec. 26; all in township 18 south, of range 23, containing 196.16 acres.

Nah-no-tin-quah, or Big Leg, died seized of N.E ¼ of S.W ¼, S.E ¼ of N.W ¼, lots 9, 10, 10, in sec. 24, township 18 south, of range 23, containing 203.60 acres.

Nah-we-ock-a-soh died seized of the S.W ¼ of sec. 10, the S.W ¼ of the N.W ¼ of sec. 10, in township 19, range 24 E., containing 200 acres.

Nah-nah-jin-noh died seized of the S. ½ of the N.E ¼ of sec. 35; S. ½ of the N.W ¼ of section 35; S.E ¼ of the N.E ¼ of sec. 34, in township 19 south, of range 24, containing 200 acres.

Pe-to-tom-e-quah died seized of the S.E ¼ of the S.E ¼ of sec. 7; S. ½ of the S.W ¼ of sec. 8; S. ½ of the S.E ¼ of sec. 8, in township 10 south, of R. 24 E., containing 200 acres.

Pem-g-o-ton-wah died seized of the S. ½ of N.E ¼ of sec. 32; the S. ½ of theN. W. ¼ of sec. 33; S.W ¼ of the N.E ¼ of sec. 33, in township 18 south, of range 24, containing 200 acres.

Sar-co-co-noh, or Joe Wea, died seized of the N.W ¼ of sec. 5; the N.W ¼ of the N.E ¼ of the N.E fr. ¼ of sec. 5; lots 1 and 2 in sec. 6, in township 19 south, of R. 22 E., and the S.W. of the
48 S.E ½ of sec. 32, in township 18 south, of range 24, containing 212.09 acres.

Exhibit B.

No. 32.

Marsellus La Croix.—In township 19 south, range 25 east:

S.W. ¼ of sec. 15	160
S.W. ¼ of S.E. ¼ of sec. 15	40
	200

No. 34.

Harriet De Karne.—In township 19 south, range 24 E.:

S.E. ¼ of sec. 13	160
S.E. ¼ of N.E. ¼ of sec. 13	40
	200

No. 35.

Mariah Christiana.—In township 19 south, range 24 E.:

S.W. ¼ of sec. 13	160
S.W. ¼ of N.W. ¼ of sec. 13	40
	200

No. 39.

Octavia Cadetor.—In township 19 S., R. 25 E.:

E. ½ of S.W. ¼ of sec. 18	80
N.W. fr. ¼ of S.W. fr. ¼ of sec. 18	36.03
S.W. fr. ¼ of S.W. fr. ¼ of sec. 18	36.53
N.W. fr. ¼ of N.W. fr. ¼ of sec. 18	36.90
	189.48

No. 46.

Old-nah-sah-cuch.—In township 19 south, range 25 E.:

S.E. ¼ of sec. 8	160
N.E. ¼ of N.E. ¼ of sec. 17	40
	200

49 No. 47.

Pe-pe-an.—In township 19 south, range 24 E.:

N.W. ¼ of sec. 11	160
N.W. ¼ of N.E. ¼, 11	40
	200

No. 48.

Medelene.—In township 19 south, R. 25 E.:

South W. ¼ of sec. 8	160
N.W. ¼ of N.W. ¼	40
	200

No. 49.

Jortoh.—In township 19 south, range 25 E.:

S.W. ¼ of N.W. ¼ of sec. 17	40
S. ½ of N.W. ¼ of sec. 17	80
W. ½ of N.W. ¼ of sec. 17	80
	200

No. 50.

Francis Topash, child.—In township 19 south, range 24 E.:

N.E. ¼ of N.W. ¼ of sec. 12	40
N.W. ¼ of N.W. ¼ of sec. 12	160
	200

No. 51.

Nancy Topash.—In township 19, range 24:

S.W. ¼ of sec. 12	160
S.E. ¼ of N.E. ¼ of sec. 12	40
	200

No. 52.

Pa-ke-sha.—In township 19 south, range 25 E.:

50	S.E. ¼ of N.E. ¼ of sec. 17	40
	S.E. ¼ of N.E. ¼ of sec. 17	160
		200

No. 53.

Kee-che-co-quah.—In township 19 south, range 25 E.:

S.W. ¼ of sec. 17	160

No. 54.

Shoptuse, or John Baptiste.—In township 19 south, range 24 E.:

S.E. ¼ of sec. 12	160
N.E. ¼ of sec. 13	40
	200

No. 55.

Kash-wa.—In township 19 south, range 24 E.:

N.W. $\frac{1}{4}$ of N.W. $\frac{1}{4}$ of sec. 13	40
E. $\frac{1}{2}$ of N.E. $\frac{1}{4}$ of sec. 13	80
W. $\frac{1}{2}$ of N.E. $\frac{1}{4}$ of sec. 13	80
	200

No. 56.

Autine.

E. $\frac{1}{2}$ of N.W. $\frac{1}{4}$ of sec. 7	80
N.W. fr. $\frac{1}{4}$ of S.W. fr. $\frac{1}{4}$ of sec. 7	34.01
S.W. fr. $\frac{1}{4}$ of S.W. fr. $\frac{1}{4}$ of sec. 7	34.51
S.W. fr. $\frac{1}{4}$ of N.W. fr. $\frac{1}{4}$ of sec. 18	35.01
	183.53

No. 57.

Me-sha-was.—In township 19 S., R. 25 E.:

S.W. $\frac{1}{4}$ of N.W. $\frac{1}{4}$ of sec. 16	40
E. $\frac{1}{2}$ of N.W. $\frac{1}{4}$ of sec. 16	80
W. $\frac{1}{2}$ of N.E. $\frac{1}{4}$ of sec. 16	80
	200

51 No. 58.

Pang-gosh-e-no-quah.—In township 19 south, range 25 E.:

S.E. $\frac{1}{4}$ of sec. 18	160
S.E. $\frac{1}{4}$ of N.E. $\frac{1}{4}$, sec. 18	40
	200

No. 59.

Kattas, her child.—In township 19 south, range 25 E.:

West $\frac{1}{2}$ of N.E. $\frac{1}{4}$ of sec. 18	80
E. $\frac{1}{2}$ of N.W. $\frac{1}{4}$ of sec. 18	80
S.W. fr. $\frac{1}{4}$, N.W. fr. $\frac{1}{4}$ of sec. 18	35.53
	195.53

No. 60.

Coh-woh-we.—In township 19 south, range 25 E.:

S.W. $\frac{1}{4}$ of sec. 9	160
N.W. $\frac{1}{4}$ of N.W. $\frac{1}{4}$ of sec. 16	40
	200

No. 61.

Cha-coh-sach, her child.—In township 19 south, range 25 E.:

S.E. ¼ of sec. 7	160
N.E. ¼ of N.E. ½ of sec. 18	40
	200

No. 62.

Otta-bo-quah.—In township 19 south, range 25 E.:

S.E. ¼ of sec. 9	160
N.E. ¼ of N.E. ¼ of sec. 16	40
	200

No. 63.

Otta-bo-quah, her child.—In township 19 south, range 25 E.:

52

No. 64.

Caw-cock-ke.—In township 19 S., R. 25 E.:

N. W. ¼ of sec. 16	160

No. 67.

Lan-guh-woh-quah.—In township 19 S., R. 25 E.:

S. E. ¼ of N. E. ¼ of sec. 16	40
S. E. ¼ of sec. 16	160
	200

No. 68.

Koh-a-sha-nas.—In township 19 S., R. 24 E.:

S. W. ¼ of S. E. ¼ of sec. 11	40
E. ½ of N. E. ¼ of sec. 11	80
W. ½ of N. W. ¼ of sec. 12	80
	200

Total 488.54 acres.

Indorsed: Filed May 8th, 1865.

THOMAS ROBERTS, *Clerk.*

And afterwards, to wit, on the 29th day of June, the following replication was filed, viz:

Replication.

The district court sitting in and for the co. of Miami, in the State of Kansas.

WAN-ZOP-PE-AH and others, plaintiffs,
vs.
THE BOARD OF COUNTY COMMISSIONERS OF Miami county *et al.*, defendants.

53 And now comes the said plaintiffs, and for replication to the answer of the said defendants, say that they deny each and every material allegation contained therein that is in conflict with the allegations of the petition and the amendments to said petition filed by the said pl'ffs in this case, and the said plaintiffs pray, &c.

WILSON SHANNON,
Att'ys for Pl'ffs.

And thereupon, afterwards, to wit, at the June special term of said court for A. D. 1865, this cause called in open court and tried upon evidence, to wit:

State of Kansas, county of Miami, district court.

WAN-ZOP-EAH *et al.*, pl'ffs,
vs.
THE BOARD OF COUNTY COMMISSIONERS OF Miami county *et al.*, def't.

Be it remembered, that the above cause coming on to be heard at the special June term, A. D. 1865, of the district court of Miami co., State of Kansas, and thereupon the following agreed facts
54 signed by counsel of the respective parties was used and read in evidence, that said agreed statement of facts is in words and figures following, to wit:

State of Kansas, Miami county, district court.

WAN-ZOP-E-AH *et al.*, plaintiffs,
vs.
THE BOARD OF COUNTY COMMISSIONERS OF Miami county *et al.*, def'ts.

The counsel for the pl'ffs and defendants agree to the following facts in this case:

1st. That the four individuals named as pl'ff in this case were at the commencement of this suit the chiefs and headmen of the Miami tribe of Indians mentioned in the petition, and that they resided in the said county of Miami, and that they selected their head rights and reservations of land under the said treaty in the petition referred to as confirmed by the President of the U. S. on the 4th day of August, A. D. 1854; that their said head rights are situated in the said county of Miami; that the said pl'ffs, as the chiefs and head men of the Miami tribe of Indians, represent said tribe and transact the

business of said tribe; that they receive funds from the United States for tribal purposes and disburse the same for the said tribe, and their receipts and acts are recognized as valid by the authorities of
55 the United States at Washington city; that the government of the United States have an Indian agent for the Miami tribe of Indians, who resides in the said county of Miami, and keeps his office in said county, and transacts the business of the United States with the chiefs and head men of the said tribe in the said county of Miami; that the tribal organization of the said Miami tribe of Indians is kept up and maintained in the said co. of Miami, where the annuities from the U. S. are paid out to the said tribe of Indians under the supervision of the Indian agent for said tribe; that the head rights of the Miami Indians under said treaty are situated in the said county of Miami, and the defendants have assessed the same for taxation, and claim the right to levy taxes on said head rights, and in default of payment of said taxes, to sell the said rights for said taxes as in said petition set forth, and that said head rights have been advertised for sale for taxes as in said petition set forth.

It is further agreed that patents issued is in said petition stated to the pl'ffs and the members of the Miami tribe of Indians residing in said county for the head rights of each member, which said several patents are in all respects similar to the copy hereto attached,
56 marked A, except the name of the patentee and the description of the land; that the printed paper hereto attached, marked B, is a copy of the rules and regulations made by the Secretary of the Interior for the sale of the head rights on Indian lands therein mentioned.

It is further agreed that map marked D shows correctly the head rights selected and patented to the members of the Miami tribe of Indians under the said treaty of 1854, and also the reservation and other Indian lands of the Miami tribe of Indians.

It is further agreed that said map be considered a part of the record in this case, and that the same may be used in the Supreme Court as part of the record by either party; said map may show the lands sold by the Miami Indians by and with the consent of the Secretary of the Interior of the United States.

It is further agreed that the lands sold as aforesaid have been sold mostly to whites.

The word head rights when used in this agreement means the lands settled by the Miami Indians under the treaty of 1854, and which has been patented.

It is admitted that the lands of the said Indians held under said patents according to the laws of Kansas under the directions and regulations of the Secretary of the Interior; that guardians are
57 appointed by the probate court of said county for minors and their lands, and sold by order of the probate court under the late regulations of the Secretary of the Interior; that the said Miami Indians sue and are sued in the various courts in the said county of Miami; that said Indians trade and traffic with the whites and the whites with them, the same as the whites do with each other; tha

the tribe executes no control over the head rights, and do not punish for offences among themselves, and the Indians go to the criminal courts for redress; that eight of the persons for use this suit is brought are white men adopted into the tribe, and draw head rights under the treaty; some of the adopted whites exercise the elective franchise; that highways are laid out over and across said lands under the authority of the laws of Kansas; that farms of the whites are interspersed more or less among these Indian lands; that the municipal townships of the county embrace said Indian lands, and have since the organization of the county.

The annuities from the United States are not received by the chiefs, but is paid over to each Indian, who signs a pay-roll. The
58 chiefs only receive those funds that are used and expended for tribal purposes; that the agent of the United States for the Miami tribe of Indians resides in the town of Paola in said county; that the said tribe does not enforce the collection of debts among the members of said tribe.

(Signed) WILSON SHANNON,
Att'y for said Plaintiffs.
WAGSTAFF & THACHER,
Attorneys for Defendant.

Printed paper marked "B."

Rules and regulations to be observed in the execution of conveyances of lands, which have been or shall be assigned in severalty to Indians within the territory of Kansas, and for which patents shall be issued in conformity with the 11 sec. of the act of Congress entitled: An act making appropriations for sundry civil expenses of the government for the year ending June eighteen hundred and sixty, approved March 3d, 1859:

Individual Indian reserves are divided into two classes: those which are, and those which are not included within the boundaries of a tribal reservation. The former are inalienable, except to
59 Indians by birth, members of the tribe to which the reservee belongs, the latter are inalienable under the following conditions:

1st. The deed or instrument of conveyance must be executed in the presence of two subscribing witnesses, and acknowledged before the agent within the limits of whose agency the reservee resides, and when presented for approval, must be accompanied by the following certificates, viz:

1st. A certificate signed by two of the chiefs of the tribe, to which the reservee belongs, setting forth that the grantor is the identical individual to whom the land was originally granted, or his (or her) sole surviving heir that he (or she as the case may be) is competent to manage his (or her) affairs, and to dispose of his (or her) property, and that they think it advisable that the lands should be sold.

And in the case the original reservee shall have died, leaving more than one heir, the identity and competency of all such heirs must be set forth in the certificate.

2d. A certificate from the agent for the tribe, to which the reservee belongs, that the contents, purport, and effect of the deed of conveyance were explained to, and fully understood by the grantor or grantors; that the consideration specified therein is a fair
60 price for the land; that the same has been paid to the grantor or grantors in his presence in gold or silver coin of the United States, and that the conveyance is in every respect free from fraud or deception.

2d. Incompetents will be permitted to make sale of their land in the same manner as those of the competent class, except that their incompetency must be stated in the certificate of the chiefs, and the certificate of the agent must set forth that the purchase money has been paid to him for the use of the grantor or grantors, and that he holds the same subject to the order of the Commissioner of Indian Affairs.

3d. If the reservee reside within the bounds of an Indian agency, the deed of conveyance may be executed before a justice of the peace or other officer having legal jurisdiction in the premises, whose official character must be properly authenticated.

If the grantor or grantors should be known to such officer, he must certify that he (or she) is fully competent to dispose of his (or her) and manage his (or her) business affairs; that the consideration specified was a fair price for the land at the date of the sale; that the same was paid to the grantor or grantors in his presence in
61 gold or silver coin of the United States, and that the entire transaction is free from fraud or deception. If the aforesaid facts are not known to such officer they must be verified by the affidavits of at least two credible persons, who are cognizant of those facts, whose veracity must be certified by such officers, and the testimony, and all papers pertaining to the conveyance, must be properly authenticated under the seal of a court of competent jurisdiction.

The value of the land described in the deed must be appraised by at least two disinterested persons of integrity and sound judgment, who, after a full inspection of the premises, will, under oath, set for the market price thereof, and the character of such appraisement for veracity should be certified by a proper officer.

4th. A diagram prepared by a competent surveyor or an authenticated copy of the official plot of survey, indicating the land intended to be alienated, must be furnished for the use of the Indian office.

5th. No reservee will be allowed to sell more three-fourths of the land assigned to him (or her) under the treaty provisions, except in special cases, where circumstances to be determined by the Secretary of the Interior may seem a relaxation of the rule.

62 No sale or conveyance which does not substantially conform to the foregoing regulations will receive the approval of the department.

DEPARTMENT OF THE INTERIOR,
Office Indian Affairs, Dec. 17th, 1859.

The foregoing rules and regulations designed for the government

of the respective parties in the execution of deeds of conveyance pertaining to the alienation of lands assigned in severalty to Indians within the Territory of Kansas are respectfully submitted to the Secretary of the Interior with a recommendation that the same may be approved.

A. B. GREENWOOD, *Commissioner.*

DEPARTMENT OF THE INTERIOR, *Dec. 19th*, 1859.

The aforesaid rules and regulations are hereby approved as recommended by the Commissioner of Indian Affairs.

J. THOMPSON, *Secretary.*

Paper marked "A."

The United States of America to all to whom these presents come, greeting:

Whereas by the 2d article of the treaty concluded on the 5th day of June, A. D. 1854, between the commissioner on the part
63 of the U. S. and the delegates of the Miami tribe of Indians, it is agreed that selections of lands shall be made for individuals and heads of families of the Miami tribe of Indians, and whereas a return dated the 18th of April, 1859, from the Commissioner of Indian Affairs has been made to the General Land Office accompanied by Miami Reservations Book "A," whereby it appears that on the 16th of April, 1859, the Secretary of the Interior approved the following selections:

Now know ye that the United States of America, in consideration of the premises and pursuant to the provisions of the treaty aforesaid, have given and granted, and by these presents do give and grant unto the said and his heirs, the tracts of land above described on the conditions specified in the treaty.

That the lands now patented shall not be liable to levy, sale, or execution, or forfeiture: Provided, that the legislature of a State within which the ceded county may be hereafter embraced, may, with the assent of Congress, remove the restriction, and upon the further condition as prescribed by the Secretary of the Interior, under
64 the provisions of the 11th section of the act of Congress, approved March 3d, 1859, (U. S. Statutes, Vol. 11, pages 450,) that the said tracts of land shall never be sold or conveyed by the grantee or his heirs without the consent of the Secretary of the Interior for the time being, and to his heirs and assigns forever upon the condition aforesaid.

In testimony whereof I, James Buchanan, and President of the United States, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the city of Washington, this first day of November, in the year of our Lord one thousand eight hundred and fifty-nine, and of the independence of the United States the eighty-fourth.

By the President:

JAMES BUCHANAN,
By J. B. LEONARD, *Secretary.*

WAN-ZO-PE-AH *et al.*, plaintiffs,
vs.
THE BOARD OF COUNTY COMMISSIONERS OF Miami county, and Thomas Akers, treasurer of said county of Miami, and Daniel Childs, county clerk of said county, defendants. } Civil action.

65 This cause coming on to be heard by the court on the issues joined between the said pl'ffs and def'ts, and on our own agreed state of facts, and the arguments of counsel having been heard as well for the said pl'ffs as the said def'ts, the court do find that the said pl'ffs are entitled to the relief prayed for.

Whereupon the court do order, adjudge, and decree that the injunction heretofore allowed in this case be, and the same is hereby, made perpetual, and that said county board be restrained from assessing said tracts of land in the petition described for taxation and from levying any taxes thereon or collecting the same, and that the said treasurer of Miami county be, and he is hereby, enjoined from selling any of said tracts of land for the non-payment of taxes levied thereon for the year 1863, and that said treasurer shall wholly refrain from selling any of said tracts of said land for said taxes, and that said Daniel Childs, county clerk, be, and he hereby is, restrained from executing, issuing, and delivering any tax deed in the name of said county to any one for any of said tracts of land; and it is fur-
66 ther ordered and decreed that the said assessment and levy of taxes on said land for 1863 are entirely null and void, and shall be taken and held for nought.

And the court do further order, adjudge, and decree that the said plaintiffs recover of the said defendants their costs of suit in this behalf expended, taxed at $, and in default of payment execution issue therefor.

And thereupon came the pl'ffs in this action by their attorneys and file this bill of exceptions, and ask that the same be made a part of the record in this case. Said bill of execution is endorsed: Bill of exceptions. Filed June 29th, 1865. Thomas Roberts, clerk.

(Signed) D. M. VALENTINE,
Judge of the Fourth Judicial District.

Bill of exceptions.

That thereupon, there being no other evidence on testimony used in this case or offered by either party, that after arguments of counsel the court, on the issue joined, find for the pl'ffs, and ordered and adjudged that the order of injunction heretofore issued and
67 granted in this cause be made perpetual; that the said def'ts, and each of them, be restrained perpetually from assessing taxes on said lands or from collecting the same or selling said lands for said taxes, and that the plaintiffs recover of the def'ts their costs therein expended, taxed at dollars, and thereof let execution issue.

To which finding of the court and its rulings thereon, and its decision making the injunction perpetual heretofore granted and issued, the def'ts then and there excepted, and asked that this their bill be allowed and made part of the record.

(Signed) D. M. VALENTINE,
Judge of the Fourth Judicial District.

Indorsed: Filed June 29th, 1865.

THOMAS ROBERTS, *Clerk.*

STATE OF KANSAS, *county of Miami, ss:*

I, T. J. Bannister, a deputy clerk of the district court, fourth judicial district, in and for the county of Miami, duly appointed and qualified, do hereby certify that the foregoing transcript is a true and correct copy of the proceedings had in this court in the foregoing cause.

In testimony whereof I hereunto set my hand and the seal
68 of the said court, at my office in Paola, this 19th day of July, A. D. 1865.

[L. S.] THOMAS ROBERTS, *Clerk.*
By T. J. BANNISTER, *Deputy.*

Which said petition in error, transcript of record, and waiver of summons is indorsed as follows, to wit:

"Filed July 22d, 1866.

"ANDREW STARK, *Clerk.*"

And afterwards, to wit, on Monday, the 24th day of July, A. D. 1865, said supreme court of Kansas met pursuant to adjournment, when were present Hon. Robert Crozier, chief justice, Hon. Jacob Safford and Hon. L. D. Bailey, associate justices, and Andrew Stark, clerk; and among other things done on said day the following appears of record on the journals of said court, to wit:

BOARD OF COMMISSIONERS OF MIAMI COUNTY
vs.
WAN-ZOP-PE-AH *et al.*

This cause coming on to be heard, was submitted by S. C. Thacker, esq., attorney for the plaintiffs in error, and by Wilson Shan-
69 non, esq., attorney for the defendants in error, and taken under advisement by the court.

And afterwards, to wit, on the 19th day of September, A. D. 1865, among the proceedings of said supreme court as recorded the following appears upon the journals, to wit:

THE BOARD OF COMMISSIONERS OF MIAMI COUNTY
vs.
WAN-ZOP-PE-AH *et al.*

This cause came on to be heard upon a transcript from the judgment and record of the district court sitting in and for Miami county,

Kansas, and was argued by counsel and considered by the court, whereupon it is ordered by the court here that the judgment of said district court of Miami county be and the same is hereby reversed, and the cause remanded to said district court with instructions to render a judgment for the defendants, and denying the injunction prayed for in plaintiffs' petition. And is further considered and adjudge that the said defendants in error, Wan-zop-pe-ah, pay all the the costs of this court, and that execution issue therefor.

70 And now come the said defendants in error by their attorney, Wilson Shannon, esq., and except to the judgment and orders made herein, and move the court that their said exceptions may be entered of record, which is done.

And afterwards, to wit, on the 20th day of May, A. D. 1866, the following writ of error, and a copy thereof, were filed in the office of the clerk of the supreme court:

71 *Writ of error.*

THE UNITED STATES OF AMERICA, *ss:*

The President of the United States to the hon. the judges of the supreme court of the State of Kansas, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea, which is in said supreme court before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Wazop-e-ah, Metosen-yeh, Go-to-cop-uale, Etaw-we-ke-sick, who institute and bring this action, as well for themselves as for the whole of the members of the Miami tribe of Indians of the State of Kansas, plaintiffs, and the board of county commissioners of the county of Miami, and Thomas Akers, treasurer of said county of Miami, in the State of Kansas, and Daniel Childs, clerk of said county, defendants, wherein was drawn in question the validity of a statute of the said State of Kansas and authority exercised under the same, on the ground of its being repugnant to the treaties and laws of the United States, and the decision was in favor of such, its validity, and

72 the authority exercised under the same; and wherein was also drawn in question the construction of a treaty and statute of the United States, and the decision was against the right, privilege, and exemption specially set up and claimed under such treaty and statute, a manifest error hath happened to the great damage of the said Wau-zop-e-ah, Metosen-yeh, Go-to-cop-uale, E-taw-we-ke-sick, who institute and bring this action as aforesaid, as by their complaint appears: We, being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this

writ, so that you may have the same at Washington on the first Monday of December next, in the said Supreme Court, to be then and there held, that the record of proceedings aforesaid being inspected
the said Supreme Court may cause further to be done herein
73 to correct that what of right and according to the laws and customs of the United States should be done.

Witness the honorable Salmon P. Chase, Chief Justice of the said Supreme Court of the United States of America, the ninth day of April, in the year of our Lord one thousand eight hundred and sixty-six.

[SEAL.]

A. S. THOMAS,
Clerk of the Circuit Court of the United States of America for the Ninth Circuit for the District of Kansas.

74 Filed May 20th, A. D. 1866.

ANDREW STARK, *Clerk.*

75 And afterwards, to wit, on the 31st day of May, A. D. 1866, the following bond was filed in the office of the clerk of the supreme court of Kansas, to wit:

Supreme Court of the United States.

WAU-ZOP-E-AH, METOSEN-YEH, GO-TO-COP-wah, E-teno-we-ke-sick, who institute and bring this action, as well for themselves as for the whole of the members of the Miami tribe of Indians of the State of Kansas, plaintiffs,

vs.

THE BOARD OF COUNTY COMMISSIONERS OF the county of Miami, and Thomas Akers, treasurer of said county of Miami, in the State of Kansas, and Daniel Childs, clerk of said county, defendants in error.

Know all men by these presents that we, Batise Peoria, are held and firmly bound unto the above-named board of county commissioners of the county of Miami, and Thomas Akers, treasurer of said county of Miami, in the State of Kansas, and Daniel Childs, clerk of said county, in the sum of six hundred dollars, to be paid to the said board of county commissioners of the county of Miami, in the State
of Kansas, and Daniel Childs, clerk of said county, and their
76 successors in office, to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals and dated this 23d day of May, A. D. 1866.

Whereas the above-named Wau-zop-e-ah, Metosen-yeh, Go-to-cop-wah, E-teno-we-ke-sick, who institute and bring this action as well

for themselves as for the whole of the members of the Miami tribe of Indians of the State of Kansas, have prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled suit by the supreme court of the State of Kansas.

Now, therefore, the condition of this obligation is such that if the above-named Wau-zop-e-ah, Me-to-sen-yeh, Go-to-cop-wah, E-tau-we-ke-sick, who institute and bring this action as well for themselves as for the whole of the members of the Miami tribe of Indians of the State of Kansas, shall prosecute their said writ of error to effect and answer all costs if they shall fail to make good their plea, then this obligation shall be void, otherwise the same shall remain in full force and virtue.

[SEAL.] his BATISTE + PEORIA. mark.

Sealed and delivered in presence of—
ROBERT CROZIER.
J. L. WEAVER.

77 The foregoing bond and the surety thereto are sufficient and approved by me.
May 23d, '66.

ROB'T CROZIER,
Chief Justice Sup. Ct., Kansas.

Which said bond is indorsed as follows, to wit: Wau-zop-e-ah *et al. vs.* The Board of County Commissioners of the county of Miami *et al.*
Bond filed May 31st, A. D. 1866.

ANDREW STARK, *Clerk S. C.*

And afterwards, to wit, on the 5th day of June, A. D. 1866, the following citation was filed in the office of the clerk of the supreme court of Kansas, to wit:

78 *Citation.*

UNITED STATES OF AMERICA, *ss:*

To the board of county commissioners of the county of Miami, in the State of Kansas, and Thomas Akers, treasurer of said county of Miami, and Daniel Childs, clerk of said county of Miami, in the State of Kansas:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday in December next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Kansas, wherein Wan-zop-e-ah, Metosin-yeh, Go-to-cop-vale, Etaw-we-ke-sick, who institute and bring this action as well for themselves as for the whole of the members of the Miami tribe of Indians of the State of

Kansas, are plaintiffs, and you are defendants in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the honorable Robert Crozier, chief justice of the supreme court of the State of Kansas, this 23d day of May, in the year of our Lord 1866.

[SEAL.]

ROB'T CROZIER,
Chief Justice Sup. Court, Kansas.

79 I hereby accept service of the within writ, June 1st, 1866. Lawrence, Kansas.

W. R. WAGSTAFF,
One of the Attorneys for Defendants in Error.

STATE OF KANSAS, *County of Douglas, ss:*

I, James S. Emery, of lawful age, being duly sworn, says that on the first day of June, A. D. 1866, I exhibited to Solon O. Thacher, one of the attorneys of record for defendants in error, and delivered to him a true copy of the same.

J. S. EMERY.

Subscribed and sworn to before me, this 2d day of June, A. D. 1866.

S. A. STONEBRAKER,
Clerk of the District Court of Douglas County, Kansas.
By A. J. REID, *Deputy.*

80 Filed June 5, A. D. 1866.

ANDREW STARK, *Clerk.*

81 STATE OF KANSAS, *Supreme Court, ss:*

I, Andrew Stark, clerk of the supreme court of Kansas, do hereby certify that the foregoing is a correct, full, and complete transcript of the record and proceedings in the above-entitled cause, as the same remains of record and on file in my office.

In testimony whereof I have hereto set my hand and affixed the seal of said supreme court, at my office, in the city of Topeka, this 9th day of November, A. D. 1866.

[SEAL.]

ANDREW STARK,
Clerk Supreme Court of Kansas.

[5-ct. stamp, cancelled.]

In the Supreme Court of the United States.

DECEMBER TERM, 1866.

WAN-ZOP-PEAH et al.

vs.

COMMISSIONERS OF MIAMI COUNTY, Kansas, et al.

No. 327.

On the 2d day of May, 1864, a petition was filed by the plaintiffs in error in the district court of Miami county, Kansas, to enjoin the collection of taxes assessed upon the lands of Miami Indians, of Kansas, assigned to them in severalty by the treaty of 1854, (vol. 10, Stat. p. 10 g 3,) and which were patented to them under said treaty; and to prevent the sale thereof for such taxes. (Record, p. 2 to 12.)

On the same day a temporary injunction was granted. (Record, p. 13 to 14.)

Amendments were subsequently made to this petition, to which, by stipulations between the parties all objections were waived, and they were to be considered as parts of the amended petition. (Record, p. 19.)

On the 8th day of May, 1865, the defendants filed their answer to this petition. (Record, p. 20 to 29.)

On the 20th of June, 1865, the plaintiffs filed a replication to this answer denying every allegation therein in conflict with the petition. (Record, p. 30.)

At the same time the cause was heard by the court upon an agreed state of facts, also set out in the record, pages 30 to 34, and judgment rendered making the injunction perpetual. (Record, p. 30.)

On the 19th day of September, 1865, this cause upon a transcript of the proceedings in the court below was submitted to the supreme court of the State of Kansas, in error, (Record, pages 36 and 37,) and the judgment of the district court was reversed with directions to that court to render judgment for the defendants denying the injunction prayed for, to which proper exceptions were taken.

And the cause is now pending in this court, on error to the supreme court of Kansas. (Record, pages 37, 38, 39, and 40, bond suit, return and certificate.)

Two errors are relied upon to reverse this judgment, being the two grounds assigned in the original and amended petition for the injunction asked for, as those upon which these lands were not taxable.

1. That the lands in question by the terms of the grant were "not to be liable to levy, sale, execution, or forfeiture." (Vol. 10, Stat. at Large, page 1004, article 2 of treaty.)

2. That these lands and the persons of their owners were not included within the boundaries of the Territory or State of Kansas, and therefore not subject to its legislation for any purpose.

The exemption claimed under the second article of the treaty of 1854, was a part of the estate granted; it was made in the same year in which, and after the territorial government of Kansas was created, for the benefit of the grantees; during the existence of the territorial government no change was made in the condition of the parties, created by this treaty, and it therefore becomes necessary to determine the effect and extent of this privilege or right in these Indians to hold their lands free from "levy, sale, execution, or forfeiture."

The object and scope of these proceedings were to prevent and enjoin the officers of the county of Miami from making sale of these lands for taxes, and if this exemption from sale is operative no reason is perceived why the supreme court of Kansas should have dissolved the injunction.

It is not denied that the estate granted to these Indians, by the treaty, perfected by the patents issued to them, was an es-

tate in fee simple with such restrictions upon the power of alienation as Congress might, and did by the act of March 3, 1859, provide for, but these restrictions were personal to the grantees and their heirs, and were separate from, and independent of, the other provision relating to "levy, sale, execution or forfeitures," which must be viewed as an exemption relating to the term, and not a restriction; the former relates to the person and his capacity with reference to the estate, the latter to the estate, and must attach and connect itself with it, at least, until the legislature of Kansas with the assent of Congress removes it, if this may be done in view of the language of the treaty—there being, to say the least of it, some doubt whether the restrictions which the legislature may remove, &c., are not those alone which (with reference to leases and alienations) the President or Congress might impose, and not the privilege annexed to and forming a part of the estate for the benefit of the Indian, "that the same should not be liable to levy, sale, execution or forfeiture." There could be no forcible collection of taxes on these lands except by sale, and it is the sale for this purpose that was attempted to be enjoined, and which is within the treaty privilege or exemption. As to the power of the United States to insert this exemption and grant this privilege at the time it was done, there can be no doubt. Kansas was then a Territory, the United States were not restricted in their power there; in fact the act organizing the Territory might have been repealed, and the whole country left as it was before it was passed, without any local government or law.

This, then, was the state of things existing at the time of the admission of Kansas into the Union under her constitution in 1861; these Indians, by the terms of the grant, were then possessed of the *right* to hold these lands free from liability "to levy, sale, execution or forfeiture;" this right was saved to them by the first section of the schedule to her constitution, (Compiled laws of Kansas, 1863, page 69,) as well as by the act of Congress January 29, 1861, admitting her into the Union, which by the proviso to the first section thereof, expressly en-

acted that the rights of person and property then pertaining to the Indians of the Territory should not by reason of anything contained in the constitution of the State respecting its boundaries, be construed to impair such rights, and reserving to the United States the same rights and power as to the Indians, which they would have had if no State had been created or admitted.

These provisions clearly show the intention of Congress to leave the Indians and their rights intact, that they were not to be subjected either in their person or property to the laws of the new State, and by no kind of implication can it be said that there was any intention indicated to repeal the exemption relied upon. It would also seem to be very doubtful whether the power of Congress to do this is reserved in the grant.

The treaty in question is a contract; the laws of Kansas taxing these lands violate its obligations; therefore those laws are void. (7th Cranch, State of New Jersey *vs.* Wilson, page 164.)

As to the second ground of objection to the decision below, we must go back for a starting point to the period when these Indians and other tribes were located within the bounds of organized States—Indiana, Illinois, Ohio, &c.—occupying the same country in part where they had lived before the whites settled any portion of it, subject to no laws but their own customs, and no rulers but their own chiefs; but in the organization of these States no provision was made to prevent their being subjected to their jurisdictions, and in the course of time they were found to be in the way, and held bound by laws they knew nothing about—written in an unknown language, administered by tribunals novel and inscrutable to them, which made by its decrees their marriages polygamous, their children bastards, imprisoned them for debt and for crimes and misdemeanors unknown to them. These considerations, coupled with the constant demands of the new States for their lands to build railroads, canals, and for farming purposes, presented by their legislatures in the shape of acts and resolutions de-

manding the extinguishment of their titles and the removal of the Indians from the States, at length, in 1830, led to the adoption of a policy for the future protection of these people by Congress. See act of May 28, 1830, volume 4, Statutes at Large, page 411, chapter 148. By its terms the President was directed to select a country west of the Mississippi, where the Indian title was extinguished, owned by the United States, *where there was no organized State or Territory;* to divide it into five districts; to exchange with the Indians east of the Mississippi; to remove and settle them there; to *solemnly assure* them that the new country given to them should by the United States be assured and guaranteed to them, their heirs, and successors forever, and they were to be protected against all encroachments in their new homes.

The provisions of this statute were executed with the Miamis by the treaty of 1838, volume 7, Laws of United States, page 571, article 10; and the treaty of 1840, same volume, page 583, article 8, page 584, article 11, page 585, article 12, amendments of the Senate.

The latter was the last treaty made by the Miamis before their removal to their new home, in pursuance of the 8th article, of which, in 1846, they were removed to Kansas, and settled upon the tract of 500,000 acres assigned, guaranteed, and granted to them forever, where they remained until the organic act creating the Territory of Kansas was passed, May 30, 1854, (volume 10, United States Statute, page 277 to 290, sections 1 and 37,) in which the policy declared by the act of 1830 was recognized and continued.

On the 5th day of June, 1854, another treaty, which was approved by the President on the 4th day of August, 1854, (vol. 10, Stat., p. 1093 to 1100,) was made, by which these Indians ceded to the United States the land above named, with the exception and reservation of 70,000 acres thereof *for their future homes*, and also a section of six hundred and forty acres for school purposes; all of which were to be selected and assigned *to said tribe*—article 1 of treaty. By article 10 it was provided that roads might be laid out through

these *reserved* lands, (the 70,000 acres.) By the 2d article the ceded and *reserved* lands were to be surveyed, and two hundred acres were to be located within four months for each individual, &c.

By the provisions of this article these selected lands were to be patented, &c., but this provision was not new; it was only in accordance with the act of 1830, which did not limit the time when the lands were to be patented, if the Indians desired it; this was a right secured by that act and its solemn assurances.

The organic act was passed May 30, 1854; this treaty took effect August 4, 1854, the date of its ratification by the President.

The jurisdiction of the Territory, created by the organic act as to these Indians, was not to extend to their rights of person or property, nor to be construed to impair the same, "so long as such rights should remain unextinguished by treaty with them." (19th section organic act.)

The question then is, how far did the treaty of 1854 extinguished these rights as they existed when the organic act took effect?

At that time the persons of this tribe were not subject to any law but their own customs; there was no other law there except the intercourse law and laws extending to the Indian country, under which their lands were not taxable; therefore there was no law to affect either the persons or property.

What change was then made by the treaty of 1854? What rights of person or property of these Indians did it extinguish? In it there is no assent upon the part of the Indians that the laws of the territory should be extended over them, or their property, or that they should be included in any future State erected there. The rights of property which they held before under the act of 1830, and the treaty of 1838 that the same were to be guaranteed to them, their heirs and assigns forever, as to the head rights (the 200 acres reserved for the tribe and to be patented to each individual) assigned by the treaty, so far from extinguishing the treaty, confirmed them; and the

fact that partition was made amongst them, and the lands conveyed, neither questioned nor destroyed those rights, but was on the other hand the strongest affirmance of them.

It would be a strange doctrine that the reservation or enlargement of a right was destructive of it!

It then remains to inquire whether the adoption of a constitution by the State and its admission into the Union, changed the rights of person or property of these Indians as they then existed.

By the 1st section of the schedule to this constitution as above referred to—compiled laws of Kansas, page 69—it was declared in substance [in order] "that no inconvenience from the change from a territorial government to a permanent State government might arise, that all rights as respected individuals should continue as if no change had taken place."

By other provisions of the constitution existing counties were recognized, and new ones provided for, one of the latter of which nominally included the country occupied by these Indians; other provisions for the taxation of persons and property within the boundaries of the State were contained in it, but there is nothing specially relating to the taxation of these or other Indian lands in it. The boundaries of the State as claimed, were defined in the preamble—compiled laws, page 49.

In the act of Congress admitting the State into the Union, these boundaries were not accepted nor recognized, and Congress refused to submit Indians so far as their rights of person and property *then pertaining to them*, were concerned, to the jurisdiction of the State, or to assent to their being included within its boundaries until these rights were extinguished by treaty. No treaty has since been made.

The inquiry again recurs as it did with reference to the effect produced when the organic act was passed, forming the territorial government, what were the rights of person and property pertaining to these Indians when this latter act was passed? We have already seen that the treaty of 1854 did not extinguish them so far as the reservations contained

therein of their lands are concerned, nor of their persons, for there is not anything said therein of the extinguishment of their personal rights. By the terms of the 2d article of this treaty the excess of the 70,000 acres reserved remaining after the lands assigned to individuals were located was to be selected adjacent to these locations, and was to remain the common property of the tribe.

This remainder is yet held, the tribe is still in existence; they were removed to Kansas to place them beyond the boundaries of any organized State or Territory with the understanding, of course, that they were so to remain; this is manifest from the other treaties made with other tribes soon after the act of 1830 was passed; for example, that made with the Shawnees in 1831, vol. 7, Stat. page —, in the 10th article of which it is stipulated that the country ceded to them which lies west and adjoining the Miami country in Kansas, "should never be included within the bounds of any State or territory."

And if the proviso annexed to the boundary clause in the 1st section of the act of 1861, admitting the State into the Union was not intended to make good the soleman assurances of the act of 1830, the guarantees of the treaty of 1838 of protection against all persons, (the State is a person, and the county is a person,) and to leave in full force the customs and laws of the Indians; the right to govern themselves, to prevent their being subjected to the civil and criminal laws of the State, what was it intended for? Without it the rights of person and property of these Indians as residents or holders of property within the State were saved by the constitution of Kansas, to the same extent as those of citizens or other residents there; and if nothing more than this was to be effected or was intended by saying on the part of Congress "that nothing contained in the said constitution respecting the boundary of said State shall be construed to impair the rights of person or property now pertaining to the Indians of said territory," what necessity was there for inserting this provision? How could the establishment of a *boundary* of the State affect such rights

otherwise than by subjecting these persons and property to the jurisdiction of the State; and if it was not to prevent these consequences from flowing out of the clause in the constitution fixing the boundaries of the State, for what purpose was it inserted?

By the organic act, section 21, page 38, compiled laws of Kansas, the authority of the government of the United States to make any regulations respecting such Indians, their lands, property, or other rights, by treaty, law, or otherwise, which it would have been competent for the government to make if that act had never been passed, was cautiously preserved and retained, and in the act admitting the State into the Union the same provision is contained with reference to the same matter.

By the 9th article of the treaty of 1854, vol. 10 laws U. S. page 1097, it is provided that "should difficulties at any time arise, that these Indians would abide by the laws of the United States, and as they expected to be protected and have their rights vindicated by those laws."

And in the 11th article of the same treaty it is provided that the President, with the advice and consent of the Senate, might adopt such policy in the management of their affairs as in his judgment might be most beneficent to them; or Congress might thereafter make such provision by law as experience should prove to be necessary.

Until the government of the United States then consents to withdraw its protection from these people and their property, or to subject them to such laws as it may enact, they are entitled to live under and be bound by their own customs, and the jurisdiction of the State does not extend to them.

In the answer filed by the defendants in the court below, (page 22 and 23 of record,) it is alleged that by the act of 12th June, 1858, 11 vol., laws of the U. S. page 332, sec. 3, lands were allotted to certain Miamies residing in the State of Indiana from the 70,000 acre reserve and patented to them in fee simple; that a portion of the same are lands in Miami county, upon which the taxes in question were assessed and levied, and in the concluding paragraph of this answer (page 23 of

record) it is averred that these lands were held by special grant under said act of Congress, and not by virtue of the treaty stipulations of June 5, 1854, "and are not subject to the limitations in regard to sale or forfeiture for taxes as in said treaty set forth."

By the terms of the act directing these lands to be located they were "to be held by the same tenure as the locations of individuals were held, which had been made under the treaty." The exemption from levy, sale, execution, or forfeiture, was of the tenure, so was the limitation upon the power of alienation, in reference to leases and alienations. See treaty, vol. 10, laws U. S., page 1094.

The act of 1858 as to the location of these lands was based upon the first proviso to the second article of the treaty, and referred to persons who had been overlooked and wrongfully excluded. It was a mere regulation substituting the Secretary of the Interior for the chief of the tribe and Commissioner of Indian Affairs, who, in their stead and place, was to cause locations to be made in cases of persons "overlooked and wrongfully excluded;" and by the eleventh article of the treaty Congress had discretionary power to legislate in reference to their affairs, and were the sole judges of the necessity for such legislation; they had the general power also. (5th McLean, page 344; 2 Curtis, C. C, Rept., page 454.) No question is made, however, of the validity of these grants. If valid, according to the claim of the defendants in error, they are taxable upon the ground that the privilege or exemption in the treaty does not extend to them; if invalid, the lands embraced by them are held in common by the tribe, and the right to tax such lands is expressly denied by the defendant's answer. (See page 21 of record, last paragraph of first division of what *is there called* third cause of action.)

As the only point, therefore, arising in reference to them is whether the exemption from levy, sale, execution, or forfeiture provided for by the treaty is a component part of the *tenure* by which these lands are held, it is evident that Congress intended that the titles granted or assigned under the act of

1858 should be held by the same title and subject to the same limitations, privileges, and exemptions as those allotted in accordance with the regulations contained in the second article of the treaty of 1854.

Then what meaning is to be attached to this phrase, "levy, sale, execution, or forfeiture," as applicable to the lands allotted under the treaty as well as those under the act of 1858?

In the decision of the case below, which was not obtained until after the foregoing was written, Justice Crozier, on page 370, 371, 3d Kansas reports, holds that the terms levy, sale, and forfeiture apply exclusively to judicial sales, and that a sale for taxes is not a forfeiture; and the reason given is that as these same words were used in the treaties referred to with the Wyandotts, Chippewas, and Winnebagoes, and, in addition thereto, that the word "taxation" was used in place of "execution," that, therefore, the terms levy, sale, execution, or forfeiture would not extend to taxation, for, as taxation was specified, a man of Mr. Manypenny's intelligence would not be guilty of such an indiscriminating use of language (p. 370, 3 K. R.) as to use in addition thereto the words "levy, sale, or forfeiture," as he did in the three treaties referred to. And right here the inquiry would seem to be pertinent, in connection with the treaties made with the Wyandotts, Winnebagoes, and Chippewas, that, as is conceded, their lands will be exempt from taxation, why, in this respect, should the government discriminate against the Miamies and leave their lands subject to taxation when the others were not? and why, in this respect, in the language of Judge Crozier, ought not "a comparison of the language used in those treaties upon the subject under consideration to furnish some guide in the interpretation of the phrase cited from the treaty with the Miamies?" (P. 369, same report.) Certainly, why not?

Let us examine the meaning of the words used in the Miami treaty, and see whether they are the same as those used in the Chippewa and Winnebago treaties, or equivalent words.

By the laws of Kansas (compiled laws, pages 863 and 864, sections 27, 28, and 29, and page 65, sections 3 and 4, article

11, constitution) the mode in which taxes shall be *levied* is provided for as to the State, counties, townships, and municipal corporations:

1. The legislature shall provide each year for raising revenue sufficient to defray the current expenses of the State, and no tax shall be *levied* except in pursuance of a law which shall state its object, to which only it shall be applied.

2. The county commissioners shall estimate and determine the amount of money to be raised by tax for county purposes, and the amount to be raised for the support of schools, also all *other taxes* which they may be required *to levy*.

3. The trustees of townships are to determine the amount of taxes *to be levied* for township purposes annually.

4. The council of a municipal corporation is to certify to the county clerk annually the percentage by them *levied* for taxes.

We thus perceive that by the laws of Kansas there is such a thing as a levy for taxes.

There is also a sale. (Compiled Laws, p. 866, 867, and 868.)

There is also a right of redemption provided for within two years after the sale, (same vol., p. 876, sec. 7, 8,) the sale being made subject to this right, which depends upon the act of the party, the owner of the land sold. If he fails to redeem within the period fixed he forfeits the land, and the purchaser at the tax sale acquires by such purchase the title subject to the forfeiture of the right to redeem, by simple lapse of time, and not by virtue of any proceedings to produce that result. Here, then, we have also a forfeiture, which may be to an individual as well as to the State. We have, then, as applied to the question of taxation, three of the terms contained in the Miami treaty—levy, sale, and forfeiture—which it is manifest may with propriety be taken to include and should be applied to taxation; and, as before stated, this is a fair interpretation, as the government in cotemporaneous treaties exempted the other Indian lands named from taxation.

Judge Crozier, in his opinion, seems to think that the sole object of this privilege or exemption was to prevent these

lands being sold by judicial proceedings, but admits that the first two words might appropriately be held to extend to taxation. Has not this object also been accomplished? The words are, "levy, sale, *execution*, or forfeiture;" the disjunctive conjunction *or* is here used.

We have already seen what the words levy, sale, or forfeiture may mean. We therefore must ascertain what the phrase used in the treaty in connection with "execution" would mean. The lands shall not be liable to "execution"; if not liable to execution, they were not liable to levy, sale, or forfeiture, for all these are incidents to a sale under executions in Kansas.

Not being liable, then, to levy, or sale, or execution, or forfeiture, they were neither liable to taxation, nor for debt on execution; and the exemption or privilege extends to both.

If the restriction upon the power of alienation by the individual was intended to protect him against his own improvidence, and the frauds and wiles of his white neighbors, was there any less necessity for protection against his improvident acts of omission in failing to pay taxes, when it is well known as a matter of every day's experience, even among the whites in the old sections of the country, that a sale for taxes is invariably at a mere nominal price, and hence if this necessity existed in the former case the reason for it was much stronger in the latter? And in the fair and reasonable fulfilment of the guarantees of protection in the treaty of 1838, the promises of the act of 1830, and the saving clauses of the organic act and the act admitting the State into the Union, these people had a clear right to the exemption they claim, independent of the treaty of 1854, but in its interpretation they should be considered, and it should be read by the light of these provisions. The government is the guardian of these Indians and laws, and treaties affecting them should receive a liberal construction in their behalf. In fact the strongest presumptions which could be fairly raised against the government, they are entitled to. (6 Peters, S. C. Rep., p 582.)

This exception referred to the rights of person and property of Indians as they then existed, or then pertaining to them,

and also covered such territory as by treaty was not to be included in a state, &c.

And by accepting the act of admission, the new State agreed that the condition upon which the person and property of these Indians should be included within her boundaries should be dependent upon the acts of the Indians themselves.

1st. When they relinquished the rights of person and property then pertaining to them by treaty with the United States.

2d. Or when they signified their assent to the President to be included within the State.

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APPENDIX.

CROZIER, C. J.

There is but one point of difference between this case and the case of Charles Blue-Jacket *v.* The Commissioners of Johnson County, decided at the present term. The treaty with the Shawnees provides that Congress may authorize the issuing of patents for the selected lands under restrictions, under which the restriction adopted was that the lands should never be sold or aliened by the grantees or their heirs, without the consent of the Secretary of the Interior. The treaty with the Miamies, after a similar clause, provides that the lands so patented should not be liable to levy, sale, execution, or forfeiture. The patents contain the same restriction that is inserted in the patents to the Shawnees. In the case referred to, it was held that the restriction in the patent did not operate to exempt the lands from taxation. In this case it is contended that the provision above quoted has that effect. Whether these lands are taxable depends upon the construction to be given the phrases levy, sale, execution, or forfeiture. They would ordinarily be held to refer to judicial proceedings, yet the first two might be appropriately used with reference to taxation, consequently the sense in which they were intended to be understood cannot be satisfactorily determined from the words alone; other lights must, if accessible, be made available to that end. The treaty with the Miamies was executed January 5, 1854, with the Wyandottes, January 31, 1855,

with the Chippewas, February 22, 1855, and with the Winnebagoes, February 24, 1855, and all of them were negotiated by George W. Manypenny, esq., as commissioner on the part of the United States, who at the time was the United States Commissioner of Indian Affairs. A comparison of the language used in those treaties upon the subject under consideration ought to furnish some guide in the interpretation of the phrase cited from the treaty with the Miamies. The language used in each is as follows: In the treaty with the Wyandottes, "none of the lands to be thus assigned and patented to the Wyandottes should be subject to taxation for a period of five years from and after the organization of a State government over the territory where they reside, and those of the incompetent classes shall not be aliened or leased for a longer period than two years, and shall be exempt from levy, sale, or forfeiture until otherwise provided by State legislation, with the assent of Congress."

With the Chippewas, "said tracts to be exempted from taxation, levy, sale, or forfeiture"

With the Winnebagoes, precisely like that with the Chippewas.

These differ with that of the Miamies only in that the word "execution" is omitted and the word "taxation" supplied. That this was the result of accident or inadvertence certainly ought not to be presumed, nor will it be so presumed after a careful examination of the provision. When used with reference to judicial proceedings in civil matters, the words "levy and sale" are equivalent to the word "execution." Each expression means the subjecting of property to the satisfaction of a judgment, and the use of both would be tautology. In the formation of the last of these treaties it cannot be doubted that the intention was to exempt the lands from judgment sale. If such was the intention, the expression of it must be found in the exemption from "levy and sale." The word "execution" having been omitted there is no other word or words left that will express such intention. That such was the purpose is further made manifest by the addition of the word "taxation." Exemption from taxation necessarily implies exemption from sale for taxes, and no other word is necessary to that end. Having provided that the lands shall be exempt from taxation, to provide also that they shall not be subject to sale for taxes, would be a work of supererogation. Such an undiscriminating use of language ought not to be attributed to any man in public position, much less to a man of Mr. Manypenny's intelligence.

The same remarks apply with equal if not greater force to the use of the word "forfeiture." If the lands were not to be subject to sale for taxes, they could not be forfeited for their non-payment, and besides, the word "forfeiture" properly understood can have no application to taxation. Lands are not forfeited by the non-payment of taxes. The State by such omission acquires no title to them. Taxes, like a judgment of a court of record, are a mere lien upon the land, to be enforced in both instances by a sale, and the title passes and can pass by such sale alone. There can be no redemption by the owner until after a sale, for the reason that until that time the title is still in him, and there is nothing to be redeemed. After they are due and before the sale, he may pay the taxes and discharge the lien, but there is in no sense a redemption. The State or other authority imposing the taxes may become the purchaser at the sale, but until they are so purchased no title to the lands vests in such authority. Until there be a sale every vestige of title remains in the individual, and the lands are subject to a mere lien for the taxes. It need not be argued that the sale is in no sense a forfeiture.

We think, therefore, the conclusion is irresistible, that the words "levy, sale, and forfeiture," as used in the three treaties referred to, have reference to judicial proceedings alone. What good reason can be given for attributing to them a different signification where they occur in the treaty with the Miamies. They were used with reference to like subject-matters, were very probably written by the same hand, were approved by the same President, under the advice of the same Senate, and all was done within a period of eight months, and there is no presumption or rule of construction that we are aware of requiring a different interpretation. Under such circumstances the court feels compelled to attribute to them a like meaning in all the treaties; we are of opinion, therefore, that the lands in question are subject to taxation under the laws of the State, and that the district court erred in rendering judgment in favor of the plaintiffs below. That judgment will be reversed.

All the justices concurring.

Chateau et al. v. Nowlan et al., 2 Barb. 641
Cook, Ex parte, 23 Ill. Rep. 427

In the Supreme Court of the United States.

DECEMBER TERM, 1866.

BLUE JACKET et al.
vs.
THE BOARD OF COMMISSIONERS of the County of Johnson, State of Kansas. } No. 325.

YELLOW BEAVER et al.
vs.
THE BOARD OF COMMISSIONERS of the County of Miami, State of Kansas. } No. 326.

STATEMENT AND ARGUMENT FOR PLAINTIFFS IN ERROR.

By the second article of the treaty of December, 1825, vol. 7 Stat., p. 284, a tract of country in Kansas was ceded to the Shawnees of Missouri and Ohio.

By the treaty of 1831, vol. 7, p. 355, the Ohio Shawnees ceded their country in Ohio to the United States. (Article 1.) By the second article, same treaty, 100,000 acres of the land in Kansas, provided for in the former treaty, were given to them in fee to be patented, &c. By the tenth article of this treaty, p. 357, vol. 7, these lands were not to be ceded, except to the United States, and were never to be included within the bounds of any State or Territory, nor subject to its laws.

This latter treaty was the offspring of the act of Congress of May 28, 1830, vol. 4 Stat., p. 411, the main provisions of which were embodied therein. (Compare art. 2 and 10 of

treaty with secs. 3, 6, and 7, of this act. See also preamble to treaty, vol. 7, p. 355.)

By the terms of the 15th article of the treaty of 1817, vol. 7, p. 166, the lands granted to the Shawnees, ceded by the treaty of 1831 in exchange for their Kansas lands, were not to be liable for taxes as long as they continued the property of the Indians.

The Ohio Shawnees removed to Kansas and were located on this land, and were resident there on May 30, 1854, when the organic act was passed by Congress. (Compiled laws of Kansas, pages 37 and 47, sections 19 and 37.)

The rights of the Indians were preserved as they then existed, and in this case this tribe and its territory were expressly excepted out of the boundaries and jurisdiction of the Territory, and were to remain precisely the same as though the act had never been passed, not subject to any jurisdiction but that of their own laws and customs.

On the 29th of July, 1859, a constitution was formed for the State of Kansas, in which, by section 1 of Schedule, page 69; compiled laws of Kansas, it was provided that all rights of individuals should continue as if no State had been formed, or change in the government made.

On the 29th of January, 1861, an act for the admission of the State was passed by Congress, (compiled laws of Kansas, p. 75,) by which the same provisions were made with reference to the Indians as are contained in the organic act above named, they and their territory, lands and property, were excepted out of the boundaries of the State "until they should signify their assent to the President of the United States to be included therein."

But by the treaty approved 2d November, 1854, dated May 20th, 1854, vol. 10, Stat., pp. 1053, 1063, the tract of land ceded to the Shawnees by the treaty of 1825, was receded to the United States, by the 1st article thereof, and by the 2d article 200,000 acres of the same were *receded* to the Shawnees, page 1059, same volume, 2d amendment, but in the last clause of the first paragraph of the 2d article, these 200,000

acres are described as *reserved* by the Shawnees. From this ceded or reserved tract 200 acres were to be selected for each individual, except as to the bands of Black Bob and Long Tail, who were to have their lands with such others as might wish to join them, assigned to them in common in a compact body.

By the 4th article of this treaty, p. 1056, same volume, payments were to be made to the Shawnee people and annuities provided for by former treaties were to be paid to them and the Methodist missionary society.

The lands assigned to individuals were to be patented under such limitations and restrictions as Congress might impose, (Article 9th, Stat., 10 vol., p. 1057.) Congress afterwards directed lands assigned in severalty to be patented subject to such restrictions as the Secretary of the Interior might impose. (11 vol. Stat., p. 430.)

He afterwards made rules, &c., directing patents to issue with restrictions, that the land patented should not be conveyed without the consent of the Secretary of the Interior by the grantee or his heirs.

Patents were issued in pursuance thereof as set out in the record, p. —.

Those persons to whom these patents were issued held the lands granted thereby by title in fee simple with a restriction upon the power of alienation which was the same title by which they held before the conveyance to the government and reconveyance were resorted to as the easiest mode of making partition. In view, then, of these facts, the question arises what is the condition of these Indians with relation to the State of Kansas? Before the treaty of 1854, their lands were held in common in fee, without any power of disposition or alienation of them except to the United States.

By that treaty what consequences resulted? The tribal organization remained intact and still exists. From the mere fact that the lands before held in common were partitioned among a portion of them, did they thereby abandon their tribal organization and consent to be included in the future State formed six years afterwards?

Holding their lands thus partly in common and partly in severalty at the date of the admission of Kansas into the Union by the act of 29th of January, 1861, in which it is provided "that nothing contained in this said constitution respecting the boundaries of said State shall be construed to impair *the rights of person or property now pertaining to* the Indians of said territory so long as such rights shall remain unextinguished by treaty with such Indians," and having made no treaty with the United States since that time, much less one that would extinguish their rights of person or property *as then held and existing*, and being an organized tribe living under their own laws by which their rights of person alone could be measured, how is their status or condition changed from what they were when under territorial laws? and how are they brought within the jurisdiction of the State?

Again it is provided in the same act "that no territory should be included which by treaty with such Indian tribes was not (without the consent of such tribe) to be included within the territorial limits or jurisdiction of any State or territory; but all such territory shall be excepted out of the boundaries and constitute no part of the State of Kansas until said tribe shall signify their assent to the President of the United States to be included in said State."

No treaty has been made by this tribe in which such assent has been given by them.

No such assent is shown to have been given to the President. Their status is precisely the same as it was when Kansas was admitted, and these lands and persons were excepted from her boundaries.

The policy of the government as declared by the act of 1830, by the treaty of 1834, the acts of 1854 and 1859, is clear and manifest, that these people should be removed to a country where no civil government, State or territorial, existed, that they might live under and be governed by their own laws and customs, and not subjected to a system of laws of which they knew nothing, and had no hand in making.

If these rights were not those intended to be protected by this system of legislation, of what character were they?

Why did Congress declare in the 37th section of the organic act "that all treaties, laws, and other engagements made by the government of the United States with the Indian tribes inhabiting the territories embraced therein should be faithfully and rigidly observed?"

Why in the act of admission of Kansas did they reserve to the United States exclusive power and control over Indian matters therein, by providing "that nothing contained therein should affect the authority of the United States to make any regulation in reference to the Indians, their lands, property or other rights, by treaty, law, or otherwise, which it would have been competent to make if the act had never been passed."

Are these enactments evidence of the intention of Congress to yield these people up to the tender mercies of the State of Kansas in order that their lands might be subjected to sale for taxes, to sale on execution, or to sale in course of administration for payment of debts, notwithstanding the fact that they and their heirs could make no sale without the consent of the Secretary of the Interior, and even with that consent only a part of each tract?

If not, then are these lands which are a portion of the 100,000 acres mentioned in the treaty of 1831, and of the persons whose rights as Indians were saved by the acts of 1854 and 1859, by excluding them and their owners from the jurisdiction of the State, not exempted from taxation, because they are not within the legislative jurisdiction of the State.

In the decision of this case by the supreme court of Kansas (which was not seen by the writer before the foregoing remarks were prepared) no discussion of the points above presented is to be found in the reasoning of the court, but the whole subject is dismissed with the most refreshing brevity in two sentences, thus: "There is no *express* prohibition against taxing these lands or the personal property of the Indians residing upon them. The treaty does not contain it, nor is it contained in any act of Congress to which our attention has been called."

Neither is there any express provision or prohibition in the treaty, or any act of Congress against the citizens of Missouri

and their property being subjected to the laws of Kansas by extra territorial legislation. But it cannot be done. It does not therefore follow that these lands may be taxed in the absence of this *express* provision.

The restriction against the power of alienation, and the regulations of the Secretary of the Interior in reference thereto, cannot of course be regarded as exempting these lands from taxation. Nor was the title by which the tribe held these lands prior to the treaty of 1854, the ordinary Indian title, that is a mere title by occupancy not founded in any grant or title of higher character than that of mere occupancy.

By the treaty of 1831, (2d article p. 356, vol. 7,) this land was to be granted by patent in fee simple to them and their heirs as long as they should exist as a nation, and remain upon the same by the 10th article (same treaty) the power of alienation was restricted so that no sale could be made except to the United States. For this land a patent was issued which passed the fee to the Indians, this gave them *sub modo* the title and the possession, and it differs from ordinary Indian title in this that in the latter case the fee is in the United States, and the naked right of possession in the Indians.

By the latter clause of the 10th article above referred to, the President was to cause said tribe to be protected at their intended residence against all interruption or disturbance from any other tribe or nation of Indians, or from any other person or persons whatsoever, and he should have the same care and superintendence over them in the country to which they were to remove, that heretofore he had over them at their then place of residence.

By the 15th article of the treaty of 1817, p. 166, vol. 7, Stat. at Large, the tract of land ceded to them by that treaty was not to be liable to taxes of any kind so long as it continued Indian property. By the 1st article of the supplement to this treaty, vol. 7, p. 178, the lands set apart in the main treaty to be patented to certain chiefs for the individuals named in the schedule thereto, were not to be patented, but were to be reserved for the use of said individuals and held by them and

their heirs forever, unless ceded to the United States. This was not an ordinary Indian reservation for the use of the tribe, but a grant to the individuals composing that tribe, and their heirs.

And this was the condition of the Shawnees and their property in Ohio, when the treaty of 1831 was made; there was a restriction that they should not sell, except to the United States, but none against their making partitions.

Holding thus these lands, they were ceded to the United States by the treaty of 1831, and in lieu of them, by the 2d article of the same treaty, the lands in question, which are sought to be taxed, were given to them to be patented in fee, and were so patented with the same restrictions as above, viz., that they should not be sold by them, or ceded, except to the United States, with the guarantee that they should never be within the boundary of any State or Territory, nor subject to the laws thereof, and that the tribe should be protected from all interruption or disturbance.

Ordinarily taxation and protection go together, but here protection was guaranteed to these people in consideration of the cession of their lands in Ohio, and their removal to a country not within the boundaries of any State or Territory. (See recital to treaty of 1831, p. 355, vol. 7 Stat. See also act of 1830, vol. 4 Stat., p. 411.)

To carry out in good faith these guarantees in the act organizing the Territory of Kansas, "the territory (lands owned by any tribe of Indians) which by treaty with any Indian tribe was not to be included within the territorial limits or jurisdiction of any State or Territory, but all such territory should be excepted out of the boundaries and constitute no part of the same until said tribe should signify their assent to the President of the United States to be included therein."

The territory of the Shawnees was thus then, not within the jurisdiction of the Territory of Kansas, nor subject to its legislation, consequently it could not be taxed. They held their lands in fee, subject to the restriction above named, which extended to alienation but not to partition; among themselves

they could have made partition at any time; a parole partition with possession is as good as any, at least against the Territory, or a future State.

Standing thus, they could only be included within this jurisdiction when the tribe should signify their assent to the President of the United States to be included therein.

Has such assent ever been given?

This brings us to the inquiry arising out of the treaty of 1854—was this assent then given by it? (Vol. 10, p. 1055 to 1058.) It is not claimed that it was given at any other time, or in any other manner.

By this treaty the Shawnees holding their lands in common in fee by patent, no partition having been made among themselves, and the quantity of their lands being largely in excess of their wants, and proposing to divide them to the extent of 200 acres each, among themselves, (article 2,) but having no mode to effect this except by parole, ceded to the United States the whole tract of 1,600,000 acres with a retrocession in the same instrument to carry out this purpose in the manner and to the extent proposed, with a stipulation that these retroceded lands in the nature of and amounting to reservations, should cover the lands where improvements of individuals had been made, and that the restriction before annexed to their title should be as to the power of alienation, regulated *as Congress might provide for*, (article 9,) and again, in article 14, "the care and protection of the United States are invoked, and they agree to comply with the laws of the United States, and expect to be protected and have their rights vindicated by them."

In the 1st article of the treaty as first executed by the Indians, (last clause,) the lands in question were excepted and reserved from the cession for homes for the Shawnee people.

In the 2d article, 1st clause, the same body of land is described as the 200,000 acres reserved, &c. When the treaty came before the Senate for ratification it was probably found that the land to be patented as Congress might direct in accordance with the 9th article, had already been patented, and unless the reservation in the 1st clause was stricken out and

the title nominally ceded to the United States for the purpose intended, that is, to transmit the title to the individuals of the tribe, that the 9th article could not be executed. This was done, and in the next sentence, article 2d, the same land was receded to the Shawnees by an amendment proposed by the Senate to that article. In the last sentence of this same article, (No. 2,) this body of land is again characterized as a reserve. The consideration for the cession as described in the 3d article of the treaty is, that which was to have been paid for only 1,400,000 acres.

By the terms of the 2d article certain portions of the 200,000 acres were to be set apart for the benefit of absent Shawnees, which were to be sold by the President, and for the purpose of enabling him to make sales these lands were again ceded to the United States.

From these considerations it would seem to be clear that the cession of the title of the 200,000 acres by the Shawnees as a tribe to the United States was *in trust*, to be assigned to them, in severalty to some, in common to others, and the remainder to be sold, the 2d article being merely declaratory of the use. It being well settled that a grant in a treaty which requires a patent to execute it leaves the legal title in the United States until the patent issues, and being thus subject to the contract to convey, they are for this reason also, mere trustees.

The 9th article of the treaty remained unexecuted until the act of Congress of March 3, 1859, was passed.

There was no change of possession, and so far from this being contemplated the original possession was confirmed.

Substantially then, this treaty, the act of Congress and patents, as to the lands in question, left them as they stood before it was made, the only change referred to the restriction upon the power of alienation; this power was enlarged, or was, instead of being limited to a sale to the United States, made subject to Congressional legislation, and the execution of the pre-existing right to partition was provided for; neither extended to the tenure of the estate nor in any manner enlarged it.

The restriction only extended to the person of the Indian and to his legal capacity.

The treaty every where acknowledges and recognizes the tribe, and it would be a forced construction of its terms to say that because a portion of the tribe might hold their lands in severalty, that therefore the tribe abandoned their territory or gave their assent to the President to be included within the jurisdiction of the territory of Kansas. It was still territory occupied by the tribe.

An agreement by these Indians or some portion of them to hold their lands in severalty instead of in common, whether located in a body or not, is by no means a waiver of the 10th article of the treaty of 1831, or of the exception contained in the organic act, and was not so claimed by the territorial government, nor attempted to be taken advantage of by it.

The guarantees of the treaty of 1831, the act of 1830, and the saving clause in the organic act, as to their rights under them so far as the 1,400,000 acres ceded to the United States were concerned, or such portions of that tract as were unconditionally ceded, the exceptions being stated in the treaty and referring to such persons as had improvements within the boundaries of the same as designated in the 2.1 article, were of course waived, for their rights of residence were ceded when they parted with their rights of property; they no longer had any rights therein to be guaranteed to them, for they reserved none.

But we insist that as to those portions of the lands allotted by this treaty to Blue Jacket, and the remainder of the Ohio Shawnees, that all their rights of protection from the United States of retaining their lands free from taxation of the immunity from the operation of any laws, State or Territory, remained as to them intact, and there was no waiver of these rights, and we insist further, that something else is to be considered in the construction of this treaty than the mere knowledge and intentions of the commissioner who made it, and the President and Senate who ratified it. (See pages 362 and 363, 2 Kansas reports.) Something is to be considered as to these

Indians and their intentions in reference to the subject matter, an idea which does not seem to have struck the minds of the judges of the supreme court of Kansas at all. It "being so convenient" that had this commissioner intended that these lands should not be subject to taxation, he would probably have removed all doubt by inserting a provision to that effect in the patents; not having done so, the inference under the circumstances that he did not intend the lands to be exempt, is a fair one.

But as to this matter of piling Pelion on Ossa or Ossa on Pelion, it "being so convenient," it is very strange that it did not seem to these Indians necessary that the provisions of the act of 1830, of the treaty of 1831, and of the organic act, should be repeated and again renewed in the provisions of their treaty, in reference to which by saying nothing about them they ignored and repealed them *as to the future State of Kansas*, if it did not as to the existing territory—a process that must seem very strange to an Indian, that by saying nothing he relinquishes his most important rights.

So much then as to the rights of these Indians after treaty of 1854, under the Territorial government. The next subject of inquiry is as to how they and these lands were affected by the constitution of the State and the act admitting it into the Union, and it is manifest that whatever those rights then were, they were saved to them; it is expressly declared that so far as those rights are concerned, that nothing contained in the constitution of the State in reference to boundary should be construed to impair them, nor to include any territory which by treaty was not to be included therein, and it is but a sham and a pretence, a bitter mockery of justice, to say that by the thimble-rigging of cession and retrocession in the treaty of 1854, to give and assign to these Indians the particular lands upon which their individual improvements were located, and fix definite boundaries to them, that they thereby released the government from the fulfilment of existing laws and treaty stipulations entirely unconnected with those objects.

We do not controvert the proposition that the right of tax-

ation in a State is never presumed to be surrendered, unless that surrender arises from some paramount legislative enactment, or treaty stipulation; but where a new State is formed to supersede a territorial government, as was the case here, and in its constitution existing rights are saved, its legislature has no power to impair them; and if in this case the boundaries and jurisdiction of the State, either by act of Congress or treaty stipulations were limited so as not to extend to the rights of person or property of Indians, within the limits of its nominal boundary, it has no legislative jurisdiction over them; and hence, although there may not be any *express prohibition* that the lands of the Shawnees should not be taxed, yet that object may have been accomplished just as effectually by other means, such as those we rely upon in this case.

1. That this exemption arises out of the solemn guarantees of protection to these people made by the government by acts of Congress and treaty stipulations, and that as these guarantees expressly extend to the land occupied by them, and are saved with their rights of person and property, together with the power to regulate the same to the United States, by the act admitting Kansas into the Union, and assented to by her, by her coming into the Union. She has no power to legislate in reference to either for the purpose of taxation or for any other purpose.

2. By the act admitting the State into the Union the lands in question are excepted out of the boundaries of the State, and the treaty of 1831, recognized as then in full force, and hence the State has no power of taxation or legislation in reference thereto. The fair, just, and benignant rules of construction laid down by this court in 6th Peters, p. 582, are the true ones: "The language used in treaties with the Indians should never be construed to their prejudice, if words be made use of, which are susceptible of a more extended meaning than their plain import as connected with the tenor of their treaty. They should be considered as used only in the latter sense. . . How the words of a treaty were understood by these unlettered people rather than their critical meaning, should form the rule of construction."

Hence, we claim the benefit of the same rule in favor of these people, that we have conceded to the State of Kansas in reference to a presumed waiver of the right of taxation, viz: that unless it appears by the treaty of 1854 that they expressly waived the provisions of the organic act in their favor, as well as those of the act of 1830, and of the treaty of 1831, that they should be regarded as still in force, and that the reason for the acts of 1854 and 1859, existed in the design by Congress to obviate the difficulty arising from State rights encountered by Judge McLean, in the decision of the case of United States vs. Cisna, (1 McLean, 254,) in the contest of jurisdiction between the State of Ohio and the Wyandotte Indians.

The case of Yellow Beaver, No. 326, involves but one question, the decision of which in cases 325 or 327, will settle his case, that is, that his tribe and their property were situate in Kansas when the organic act was passed, and also when the State was admitted, and they were therefore excepted from its jurisdiction, the facts agreed upon being the same as those in the other cases, their treaty containing no exemptions such as the Miami treaty does against levy, sale, execution, or forfeiture, and their former treaties no such guarantees as the Shawnee treaty of 1831, and the Miami treaty of 1838 contain, as referred to in the foregoing brief.

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APPENDIX.

CROZIER. C. J.:

The questions involved in this case have been twice ably and fully argued at the bar, and the court has given to them much anxious reflection. They are in their nature very important and delicate, involving the ascertainment of the boundary between the powers and functions of the national and State governments. The case itself is *sui generis*, the books, so far as the research of counsel and a thorough examination by the court have enabled them to determine, disclosing nothing like it. Some of the principles involved have been adjudicated, and may be considered as settled and fixed, while others have never undergone judicial discussion, and still remain to be decided from a mass of disquisitions extending over the whole period from the adoption of the federal Constitution to the present time. Under such circumstances, and considering the great pecuniary interest, both State and individual, to be affected by the decision, it would be the purest affectation on the part of the court to disclaim all embarrassment in coming to a conclusion. However much courts may have been disposed to avoid a determination of grave questions by seeking for technical grounds upon which to place decisions in other cases, such a course in this instance would be wholly inexcusable. The main question is fairly put, and no matter what the embarrassment, must be answered. We shall endeavor to do so.

All the property in the State, except such as is specifically exempted by the State constitution, and such as is exempt under the federal Constitution and the laws and treaties made in pursuance thereof, is subject to taxation It is not claimed that the property in question is within the former exemption, but it is claimed that it is within the latter. The language of the State constitution, and of the act of the legislature made to carry into effect its provisions, is broad enough to include this land as taxable property, and does include it, unless controlled by paramount law. The claim is that it is so controlled. The federal Constitution, the laws of the United States made in pursuance thereof, and all treaties made under the authority of the United States are the supreme law of the land; and any State law, whether organic or legislative, which shall be in conflict with any of them, must yield to and be

controlled by them, as the paramount law. Such is the national compact, and no considerations of local policy or notions of State sovereignty can operate to dissolve it. If, in the case at bar, it shall appear that the State authorities are attempting to defeat the constitutional action of the general government, it is as clearly the duty of this court to arrest the further prosecution of such attempt as it would be for the national court so to do, had the suit been brought therein. If, by the Constitution or laws of the United States, or by the treaty with the Shawnees, the property in question is exempted from taxation, such exemption must be adjudged to be effectual. The law of the State is, to that extent, controlled thereby. It was the purpose of counsel for the plaintiffs to show that the property was so exempted; and the argument was devoted to the establishing of these two propositions: *First*, the title to the land is in the United States; and, *second*, the State has no power to tax the property of the Shawnee Indians. These will be considered in the order stated.

First. If the title to the lands be in the United States, they are not taxable. Not only are the lands of the general government exempted from taxation by express stipulation on the part of the State, but without such agreement they would not be liable to be taxed. The irrevocable ordinance of the legislature is merely the expression of what the law would have been without it. What, then, is the nature of the plaintiffs' title? Have the patentees but a portion of the title, the remainder being in the government, or have they the whole title?

The patent in terms conveys the lands in fee-simple, and contains a restriction "that said lands shall never be sold or conveyed by the grantee or his heirs without the consent of the Secretary of the Interior for the time being." It is contended that this gives to the Shawnees nothing more than the ordinary Indian title, *i. e.*, the right of perpetual use and possession, the ultimate fee remaining in the government. Where a district of country is held in common by an Indian tribe, with or without a patent in fee-simple, issued in pursuance of a treaty which does or does not provide that the government alone shall have the right to purchase from them, it has been repeatedly determined that all the title the Indians have to the land is the mere right of perpetual possession and enjoyment. The technical words of the patent or treaty, although sufficient as between individuals, or as between individual white men and the government, to convey the absolute fee-simple, have, in the case indicated, the effect stated. The

Shawnees, prior to the treaty of May 10, 1854, held the land ceded by that instrument under a patent containing as strong words of grant as could be found in the legal vocabulary, had the intention been to vest in them the most complete title known to the law; yet, under the decision, they took but the mere usufruct, and this much they could not legally convey except to the government, or by the consent of the government. Hence it is argued, although these lands are held in severalty, that because there is a restriction upon the power of alienation by the patentee, without the assent of the government, expressed through the Secretary of the Interior, that the title is the same that the Shawnees have, the mere Indian title, the fee being still in the government. If the fact that these lands are held in severalty cannot affect the question, the position of the counsel is invulnerable. But this would be assuming the very question in controversy.

It is not material to inquire whether the title of the Shawnees would be correctly described by the technical term, "fee-simple." It may be that some of the essential requisites as applied to conveyances from one individual to another, are wanting. The true test is, what was the intention of the parties, as derivable from the treaty and the provisions of the patent, all taken together, considered with reference to circumstances existing at the time they were made and issued. If that can be ascertained from these sources, it must prevail. Let us see then if it can be discovered. The policy of the government has been to induce the Indians to abandon their mode of life as hunters and warriors, and to cultivate in them a taste for, and aid them in adopting the pursuits and manners of civilization. To this end enlightened missionaries have been encouraged to live among them as teachers, and the vicious of the white race, have, so far as was practicable, been excluded from their country. They have been furnished with agricultural implements and taught the use of them. Traders and merchants have been permitted to live among them and furnish them with supplies, so that they need not depend upon the spoils of war, or rely upon the uncertain success of the chase for the necessaries of life. The white race became too strong for them to cope with in war, and it was inevitable that it would soon spread itself over the country occupied by the Indians, thereby destroying its characteristics as hunting grounds, the result of which would be, that the red men must either learn to extract a subsistence from the soil or become a race of squalid paupers. Hence the propriety of the course pursued by the government in regard to these peo-

ple. The effect of this policy is seen in many instances. The nationalities of some of the tribes most ferocious in history has become extinct, the members thereof constituting a worthy portion of the great body politic, undistinguishable from the great mass, except in color or texture. They may, with many keen regrets, look back to the palmy days of their national glory, when they were the owners and independent rulers of a continent, deploring with deep sorrow their present humble condition; yet, however much we may honor such patriotic emotions, we cannot wish the situation otherwise.

The same policy is still being pursued by the government; and who can doubt its object or result? Its ear-marks are distinctly visible in the treaty with the Shawnees. They constitute no exception to the general rule. Their rise in civilization is surely, at best, slowly working the destruction of their nationality. Nationally considered they are being "killed with kindness." Can it be doubted that the treaty of May 10, 1854, was intended as a step forward in the business?

The Shawnees, for the last third of a century have lived upon the very borders of civilization, and much of the time in actual contact with the white race. Many of them have been gradually losing the distinctive characters of the red man, adopting the habits and modes of life of their fairer-skinned neighbors, and are, and have been for years, thrifty, substantial, industrious husbandmen. On the other hand, others of them still live the nomadic lives of their fathers, preferring to remain in habits, mode of life, and in name, Indians. Attrition with the white race has not operated to polish down the roughness of their original rude character. Labor is their horror, and thrift and comfort are alike despised. In the country ceded by them by the treaty of 1854, the former class, under tribal regulations, were occupying particular portions of their country, having made thereon farms and other improvements pertaining to a fixed mode of life. Their reservation would soon be surrounded by white settlements, and be useless to the nomadic portion as hunting grounds. There was vastly more of it than would be necessary for agricultural purposes if every member of the tribe were to become an independent tiller of the soil. If suffered to remain in its then condition, it must continue to be a vast waste in the most desirable part of the territory the government was then about to open to settlement, unrelieved but by the scattering improvements of the more thrifty. Good policy dictated that the portion of these lands, which, under the circumstances, must soon become wholly useless to the Indians as homes,

should be placed in a situation to be occupied by the whites. Upon consultation with the Indians, it was ascertained that their views and those of the government coincided, and immediate steps were taken for an amicable arrangement. It was the opinion of the Shawnees that one-eighth of the lands they were occupying, would, under the circumstances then surrounding them, and in view of the inevitable condition of things in the immediate future, be sufficient for their purposes. This would be about two hundred acres for each member of the tribe. Some of them desired to hold their portions in severalty, others in common; and others still, who were incompetent to determine for themselves, or absent, were to be provided for. The remaining fourteen hundred thousand acres they were willing the government should have at a fair price; and to carry into effect these views the treaty of May 10, 1854, was made.

By that treaty the Shawnees cede to the United States the whole of their reservation, containing about sixteen hundred thousand acres, in consideration of which the government recedes to them two hundred thousand acres, and promises to pay them eight hundred and twenty-nine thousand dollars in money. These two hundred thousand acres were to be selected, except in a few instances, within thirty miles of the Missouri line. It was competent for the Indians, had they seen proper so to do, to have selected the whole in a compact body and held them in common. Had they done so, no patents would have been issued to them, and their title would have been at least the Indian title as above defined. But it was not expected that course would be taken by them. It is apparent from the provision of the treaty that some of them desired to hold their shares in severalty, and that such arrangement was in accordance with the views of the government, and the sequel shows that result to have been realized. Among the more civilized and thrifty of them such a desire was a very natural one. If they by their skill and industry should make, or had made, the portion they occupied more desirable and more valuable, they, as against the trifling and indolent portion of the tribe, would be equally entitled to the resulting benefits. This could but be accomplished by their holding their shares in severalty, and such was the course they pursued. When the Indian, in pursuance of the treaty, made his selection of lands to be held by himself in severalty, the title of the tribe, so far as the lands selected were concerned, vested in him; that is, he took the right of perpetual use and occupation. Had it been the intention of the framers of the

treaty that he should not acquire a greater title, further provision was wholly unnecessary, but further provision was in fact made. The tribe agreed that, under proper restrictions for the protection of the patentees, the government might issue patents for the lands. What was the object of this provision? It was not to enable the government to convey the ultimate title. That it would have a right to do without the consent of the tribe. It was competent, however, for them to agree that when it should be done, it should be done in such manner as to afford proper protection to the Indian in the enjoyment of his lands. It was feared, probably, that some of the patentees might be overreached by their more shrewd and better educated white neighbors, and be deprived of their lands without adequate compensation. Hence the propriety of the stipulation referred to. No time was fixed for the issuing of the patents. The government could select its own time. It was bound to nothing except that, when it did take action in the premises, it should see that the Indians were properly protected. In a little less than five years from the date of the treaty, viz: on the 3d of March, 1859, Congress provided for issuing the patents. We have already found that, from the time the selections in severalty were made, the individual Indians had the Indian title to the lands so selected. Patents were not necessary to vest in them that title; something else must have been intended. It cannot be presumed that nothing whatever was intended to be accomplished by the solemn act of Congress in providing for the issuing of patents, and the equally solemn action of the Executive department of the government in issuing them. Nothing remained in the government but the ultimate titles, and the ordinary mode adopted by the government for conveying that to individuals is by patent in fee-simple. Must not the conclusion, then, be irresistible, and that the object of these patents was to convey to the Indians the ultimate title? It seems so to the court. But the correctness of this conclusion is confirmed by the fact that, when any of these lands are sold by the grantees, with the consent of the government, the whole consideration of the sale goes to the Indian.

In all this the general policy of the government, as hereinbefore indicated, is exemplified in a striking manner. Those of the Shawnees who had become partially civilized were to be placed in situations favorable to further advancement, it not being doubted on the part of the government that they would still progress in that direction, and soon be in a condition to dispense wholly with its guardianship.

The effect of the restrictions in the patent remain to be considered. It need not be argued that it does not operate as a condition; an attempt by the Indian to convey without the assent of the Secretary of the Interior does not forfeit his right to the land. His act would be wholly void, not affecting his title in any way. It is not a limitation upon the title, because we have seen that the whole title of the government passed when the patent issued. In a like case Justice McLean held that the restriction operated to place upon the Indian a personal disability similar to that imposed by law upon a minor. (Lowry *v.* Weaver, 4 McLean, 82.) Were it not for this restriction, there being no other prohibition, Charles Blue-Jacket might convey his land, and his grantee would take the absolute title. (Doe *v.* Wilson, 23 How., 457.) To deprive him of that power, with reference to his individual property, an express prohibition was necessary, and it was competent for the government to provide that it might be inserted in the patent. The government having so provided, and the patents having been issued accordingly, the prohibition is effectual. The conclusion of the court upon the first point is that the absolute title to the lands in question was intended to be, and is, in the Indians, and not in the government, and that they must be held to be taxable if there be no other reason for adjudging them exempt.

Second. Are these lands exempt from taxation on the ground that they belong to Shawnees? The record shows that for some purposes at least the tribal organization of the Shawnees is still maintained, but it nowhere appears, neither from the treaty nor the record, that as a tribe they have a right to or that they attempt to control in any manner the lands held in severalty by the patentees. The record also shows that the lands not only do not lie in a compact body, but that they are widely scattered, being thickly interspersed with the lands and settlements of white persons, nor did the treaty require or contemplate that the selection of lands to be held in severalty should be contiguously made. Those who already had made for themselves homes were authorized to make selections including them, but were not compelled to do so. Only those who desired to hold their lands in common were required to make contiguous selections. It may have been the result of design that the selected lands came so nearly forming a compact body, but it was not in consequence of any requirement to that end; and had it been so, it was not contemplated that it would so remain. What has in fact occurred must have been expected to transpire, to wit, that some of the grantees

would desire to dispose of some of their lands, which when permitted, must inevitably break the continuity. But it is no matter now what the intention was, the fact is that the lands owned by the Indians in severalty do not lie in a compact form.

Having premised this much, we will proceed to an examination of the legal question involved.

There is no express prohibition against taxing these lands, or the personal property of the Indians residing upon them. The treaty does not contain it, nor is it contained in any act of Congress to which our attention has been directed. In disposing of these lands to the Indians, it doubtless was competent for the proper branch of the government, under the powers to make needful rules respecting the territory of the United States, and to regulate commerce with the Indian tribes, conferred by the federal Constitution, to have prohibited their taxation by the State, at least so long as they might remain the property of the members of an Indian tribe. The exercise of such power in this instance must be sought elsewhere than in express provisions of law or treaty. The court has been referred to judicial decisions in the State of New York, as establishing and illustrating the proposition contended for, and especially to that in the case of Goodall *v.* Jackson, 20 Johnson, 693. The opinion of Chancellor Kent in that case is a very elaborate, and doubtless exhaustive one upon the questions he discussed. But there is no similarity between that case and the one at bar. The ultimate title to the lands occupied by the Indians in New York never was in the general government, but from the adoption of the federal Constitution until disposed of by State regulations, remained in that State. It alone had the right to extinguish the Indian title. Various constitutional and statutory provisions had been made and enacted upon the subject of acquiring this title, and in relation to the conduct of the whites towards the Indians; and the argument of Chancellor Kent was for the purpose of showing the policy of that State with reference to the lands and other affairs of the Indians within its limits. The case arose under, and was governed exclusively by, the constitution and laws of the State of New York. The Constitution and laws of the United States had nothing whatever to do with it, so that, so far as the case at bar is concerned, very little can be learned from a perusal of his opinion. He demonstrates very conclusively that the Indians had always been left perfectly free to regulate their own internal affairs in their own way, and that the State had never attempted to make its

laws applicable to them or their affairs in their homes, but he does not show how far the State might legally have gone, had she chosen to exercise her powers in that direction. Upon that subject the opinion is perfectly silent. Because the State of New York did not attempt to make her laws applicable to the Indians or their affairs there, it can not follow that, under some circumstances, this State might not lawfully do so here; we do not, therefore, regard this case as being at all in point. The court has also been referred to a number of cases decided by the Supreme Court of the United States, among which are the Cherokee Nation *v.* Georgia, 5 Pet., 1, and Worcester *v.* Georgia, 6 Id., 515. We should feel bound by the decisions in these cases, and would implicitly follow them, did we conceive them to be applicable to the case at bar. That they are not must be apparent from even a hasty examination. The Cherokees held their lands in common. They occupied a district of country, the boundaries of which were accurately and distinctly defined; and in the exclusive occupancy thereof, the general government by treaty stipulations had guaranteed them its protection; it was not alone because the Cherokees were an Indian tribe that it was held that the laws of Georgia could have no application to them or their affairs. But it was so held because they were recognized by the general government occupying exclusively a district of country, in the enjoyment of which they were promised the protection of the United States. In the latter case the court say (page 557) "the treaties and the laws of the United States contemplate the Indian territory as completely separate from that of the States."

In the case at bar some of these conditions are wholly wanting. The Shawnees do not hold their lands in common, nor are they contiguously located. It is difficult to conceive of a national existence without a national domain upon which to maintain it. Two independent governments, in the same sphere, existing in the same locality, would be rather anomalous. It may be competent for the general government for some purposes to recognize the continued tribal existence of the Indians, but it never has recognized them as distinct nationalities, except in connection with the country they occupied. It never has treated with them or legislated in regard to their affairs, except as the owners and exclusive occupants of a particular district of country. The intercourse laws were made to apply to them only as Indians belonging to a tribe recognized and treated as such by the government which presupposes their existence as a distinct race owning and governing a particular district of country. The Shawnees who own

and occupy these selected and patented lands are in precisely the same situation they would have been if, instead of giving them two hundred acres of land apiece, the government had given each two hundred dollars, which they had used in purchasing each a quarter of a section of the public lands wherever it could be found within the State. In such a case it must be apparent that the decisions referred to could have no applicability.

Again, it is claimed that upon consideration of the treaty itself it is apparent these lands were not to be taxable. It has been already observed that there is no express provision exempting them. But it is argued that because these were ceded to be occupied as homes for the Shawnees, and were not to be sold without the consent of the government, the manifest intention was that they should not be subject to taxation. An examination of treaties made with other tribes by the same commissioner on the part of the United States, and about the same time, may throw some light upon the subject.

Between the 15th of March, 1854, and the 27th of February, 1855, George W. Manypenny, esq., as commissioner on the part of the United States, made treaties with the Otoes and Missouries, the Omahas, the Shawnees, the Iowas, the Sacs and Foxes, the Kickapoos, the Kaskaskias, the Miamis, the Wyandottes, the Chippewas, and the Winnebagoes. All of them, as will be apparent from a perusal thereof, must have been written by one person, or the subsequent ones copied from the first one. The language used is similar in all of them, and they all contain provisions with reference to the issuance of patents for land in severalty. In the treaties with the Otoes and Missouries, and with the Omahas, the language is, "The President may * * * issue a patent to such person or family for such assigned land, conditioned that the tract shall not be aliened or leased for a longer term than two years, and shall be exempt from sale or forfeiture."

With the Shawnees, "Congress may hereafter provide for issuing to such of the Shawnees as make separate selections patents for the same, with such guards and restrictions as may seem advisable for their protection therein."

With the Iowas, "Congress may hereafter provide for the issuing to such persons patents for the same, with guards and restrictions for their protection in the possesion and enjoyment thereof."

With the Kickapoos and the Sacs and Foxes, "The lands thus assigned may hereafter be confirmed by patent to the

parties or their representatives, under such regulations and restrictions as Congress may prescribe."

With the Kaskaskias, "Patents for the lands selected by or for individuals or families may be issued subject to such restrictions respecting leases and alienation as the President or Congress of the United States may prescribe."

With the Miamis, "The President may cause patents to issue to single persons or heads of families for the lands selected by or for them, subject to such restrictions respecting leases and alienation as the President or Congress of the United States may impose, and the lands so patented shall not be liable to levy, sale, execution, or forfeiture."

With the Wyandottes, "None of the lands thus assigned and patented to the Wyandottes, shall be subject to taxation for a period of five years from and after the organization of a State government over the territory where they reside; and those of the incompetent classes shall not be aliened or leased for a longer period than two years; and shall be exempt from levy, sale, or forfeiture until otherwise provided by State legislation, with the assent of Congress."

With the Chippewas, the President may "issue patents to them for the tracts so assigned to them, respectively; said tracts to be exempt from taxation, levy, sale, or forfeiture, and not to be aliened or leased for a longer period than two years at one time, until otherwise provided by the legislature of the State in which they may be situated, with the assent of Congress. They shall not be sold or aliened in fee for a period of five years after the date of the patents, and not then without the assent of the President of the United States being first obtained."

With the Winnebagoes, the same as with the Chippewas, except that the time within which the lands may not be sold, is extended to fifteen years.

Within the time above mentioned, treaties were made with the Calapooias and Willamettes, and although not negotiated by Mr. Manypenny, yet executed while he was Commissioner of Indian Affairs, which contain provisions similar to that contained in the treaty with the Miamis. The congressional action contemplated by the treaties with the Shawnees, the Iowas, the Kaskaskias, the Kickapoos, and the Miamis, is found in the act of March 3, 1859, and is in these words:

"That in all cases where, by the terms of an Indian treaty in Kansas territory, said Indians are entitled to separate selections of lands, and to a patent therefor under guards, restrictions, or conditions for their benefit, the Secretary of the In-

terior is hereby authorized to cause patents therefor to issue to such Indian or Indians and their heirs, upon such conditions and limitations, and under such guards or restrictions as may be prescribed by said Secretary."

The treaties may be divided into four classes: 1st, treaties which contain no restrictions whatever; 2d, those which prohibit alienation by the Indians without the assent of the government; 3d, those which exempt the lands from liability to levy, sale, execution, or forfeiture; and, 4th, those which, in addition to all this, expressly exempt lands from taxation. Now, in the first class mentioned, it is very plain the treaties contain no exemption of the lands from taxation. Whether that should be done was left wholly in the discretion of Congress, and was by Congress transferred to the Secretary of the Interior. In the second class the treaty itself contains a prohibition against alienation by the grantee. In the third class the prohibition in terms goes further, extending to levy, sale, or forfeiture; and in the fourth class the word "taxation" is added to the terms in the preceding class. Now, is it at all probable that Mr. Manypenny meant no more by the expression used in the fourth class than those employed in the second and third classes? The treaties of the first three classes had been negotiated by him and executed when those of the fourth class were drawn. Can it be that he meant nothing by the deliberate addition of the word "taxation," or is it to be presumed that the President and Senate of the United States regarded it as an idle word? If the Commissioner, the President, and the Senate understood the terms of these treaties which prohibit alienation to impart an exemption from taxation, is it likely the one would have deliberately inserted it, and that the others would have sanctioned its use? We think not. Mr. Manypenny manifestly intended to prohibit what he supposed had not been provided against in the second class at least. If he had considered a prohibition against alienation by the Indians a sufficient guaranty against taxation, he would not have added the exemption in terms. That such was his understanding is very manifest from the provisions of the treaty with the Wyandottes. The Wyandottes were divided into two classes; those that were competent to take charge of their own affairs constituted one class, and those not so competent were included in the other class. Patents conveying the absolute title without restriction were to be issued to the first class. The patents to be issued to the other class were to contain an express condition that the lands were not to be sold for five years, and not then without the

express consent of the President. The treaty further provides that the lands of neither class should be taxed for five years after the organization of the State government which should include them. A special prohibition was necessary to exempt the lands of the first class, but it was not necessary to extend it to those of the second class if they had considered the restrictions upon the power of alienation sufficient to that end. And more than that, he very manifestly intended that notwithstanding the restriction might continue longer than five years after the organization of the State, the lands were not for a greater length of time to be exempt from taxation; so that, taking the whole provision together, the commissioner did not consider the restriction upon the power of alienation sufficient to exempt the property from taxation. Again, under the authority vested in him by the act of Congress, it was competent for the Secretary of the Interior in issuing the patents to the Shawnees to have exempted the lands from taxation. He was given the absolute control of the subject. He was doubtless familiar with the treaty stipulations we have been considering, and must have been convinced that there was at least room for a doubt as to the efficacy of a simple restriction upon the power of alienation as an exemption from taxation. Being so convenient, had he intended that these lands should not be subject to taxation, he would probably have removed all doubt by inserting a provision to that effect in the patent; not having done so, the inference, under the circumstances that he did not intend the lands to be exempt, is a fair one.

If the lands of the Shawnees are not exempt from taxation it is unnecessary to argue that the personal property of the Indians residing thereon is not. We think, therefore, that the correctness of the second proposition, to wit, that the State has no power to tax the property of these Shawnees, is not vindicated by the decision of the courts of New York or of the Supreme Court of the United States. We also think that the treaty with the Shawnees, the act of March 3, 1854, and the action of the Secretary of the Interior in pursuance thereof, were considered in the light of the contemporaneous action of the government, and show that it was not the intention that these lands should be exempt from taxation.

Our conclusion, then, upon the whole case is, that the Shawnees who hold their lands in severalty under patents from the government, have the abstract title thereto; that the lands are subject to taxation unless exempted specifically by the constitution of this State, or by some paramount law, and that they are not so exempt.

In this conclusion we are sustained by the decision of Justice McLean in the case of *Lowry v.* Weaver, already referred to. That was a proceeding to subject to sale for the payment of his debt the lands of an Indian chief, who held them under a patent containing a restriction that they should never be aliened by the grantee or his heirs without the consent of the President of the United States. In his opinion, the judge said that by the restriction "the land was not withdrawn from the sovereign action of the State. Like others, it may be taxed by the State. * * * This belongs peculiarly to State powers. * * * Except by compact or the voluntary legislative action of the State, lands within its limits cannot be withdrawn from its ordinary action."

The judgment of the court below will be affirmed.

In the Supreme Court of the United States.

DECEMBER TERM, 1866.

BLUE JACKET ET AL.
vs.
THE BOARD OF COMMISSIONERS OF JOHNSON COUNTY, KANSAS. } No. 325.

YELLOW BEAVER ET AL.
vs.
THE BOARD OF COMMISSIONERS OF MIAMI COUNTY, KANSAS. } No. 326.

WAN-ZOP-PE-AH ET AL.
vs.
THE BOARD OF COMMISSIONERS OF MIAMI COUNTY, KANSAS. } No. 327.

BRIEF FOR THE DEFENDANTS IN ERROR.

In the Supreme Court of the United States.

THE records in these cases present the single question whether the State of Kansas has the right to tax lands held in severalty by individual Indians of the Shawnee, Miami, and Wea tribes, under patents issued to them by virtue of the treaties made with those tribes respectively in 1854, and in pursuance of the provisions of the 11th sec. of the act of June 30, 1859, (11th stat. at large, p. 431.) The plaintiffs in error distinctly admit that the decision of this question depends wholly on the existence of certain provisions in the treaties and laws of the United States, which they insist are effective to exclude the lands in question from the boundaries of the State, and to exempt them from taxation; for on the 11th and 12th pages of their brief, they say: "We do not controvert the proposition that the right of taxation in a State is never presumed to be surrendered, unless that surrender arises from some paramount legislative enactment or treaty stipulation," &c. Their whole argument rests upon this basis.

The defendants in error deny that there is any legislative enactment or existing treaty stipulation which can be fairly construed to deprive the State of power to tax these lands, nor is there any which excludes them from the boundaries and jurisdiction of the State. Both the act organizing the Territory of Kansas, and the one admitting the State into the Union, contain the following proviso:

"That nothing contained in said constitution respecting the boundaries "of said State shall be construed to impair the rights of person or "property now appertaining to the Indians in said territory, so long as

"said rights shall remain unextinguished by treaty, * * * * or "to include any territory which by treaty with such Indian tribe is not, "without consent of said tribe, to be included within the territorial limits "or jurisdiction of any State or territory, but all such territory shall be "excepted out of the boundaries, and constitute no part of the State of "Kansas until such tribe shall signify their assent," &c.

It is apparent that this provision of the law depends for its operation on the stipulations of treaties which were in force at the time of the passage of the law. If there was no clause in any treaty with the Shawnees, Miamis, or Weas guaranteeing that their lands should be excluded from the boundaries and jurisdiction of any State without their consent, then it is beyond all doubt that the proviso quoted does not effect such exclusion. But, it is only necessary to glance at the treaties in order to become perfectly satisfied that there is no such stipulation now in force to be found in the said treaties.

The 15th article of the treaty of 1817, (7th stat., p. 166,) has been quoted as bearing on the question. This suggestion does not deserve a reply; for the provision applies in so many words, only to "the tracts of land herein granted," which were in the neighborhood of Lake Erie, in the State of Ohio. There is nothing in any subsequent treaty with the Shawnees which extends that provision to other lands ceded to the tribe.

The treaty of 1825, (7th stat., p. 284,) which gave to "the Shawnee tribe of Indians within the State of Missouri for themselves and for those of the same nation now residing in Ohio, who may hereafter emigrate to the west of the Mississippi, a tract of land equal to fifty miles square," contains no provision exempting the lands from taxation or excluding them from the boundaries of any State or Territory. The land ceded to the Indians by that treaty, a tract of more than a million and a half of acres, includes the lands now in controversy in this suit. The precise limits of the tract, as subsequently laid out, are described in the first article of the treaty of 1854, hereinafter mentioned.

In 1831, a treaty was made with that part of the Shawnees who had remained in the State of Ohio. By this treaty, (7th

stat., p. 355,) the United States agreed "to grant by patent in fee simple to them and their heirs forever, so long as they shall exist as a nation and remain upon the same, a tract of land to contain one hundred thousand acres to be located, &c., within the tract of land equal to fifty miles square which was granted to the Shawnee Indians of the State of Missouri," by the treaty of 1825. The 10th article of this treaty of 1831, stipulated that the "*said band of Shawnees*" should not sell or cede these lands except to the United States, and that the said lands should never be within the bounds of any State or Territory, nor subject to the laws thereof. This tract of 100,000 acres was never surveyed, nor in any way definitely marked out and patented; but these Ohio Shawnees went and lived with the body of the tribe which had preceded them to the territory in question. And in the Indian appropriation act of 1853, (ch. 104, 10th stat., p. 236,) a sum of money was appropriated to pay the Ohio Shawnees for the failure to carry out the 2d article of the treaty of 1831. The provision of the law is in these words:

"For payment in full of all claim under that part of the treaty of "1831, which has relation to the grant of 100,000 acres of land in fee "simple to the then Ohio Shawnees, sixty-six thousand two hundred "and forty-six dollars: *Provided*, That the receipt therefor shall specify "that it is in full satisfaction of said claim: *Provided*, That this appro- "priation shall not be held to affect the title of the Ohio Shawnees to "land under the treaties of 1825 and 1831, within the fifty miles square "ceded to the Shawnees of Missouri by the treaty of 1825."

If this provision of law leaves any doubt as to the effect of the 2d and 10th articles of the treaty of 1831, all uncertainty has been removed by the treaty made on the 10th May, 1854, which was executed by and for the benefit of both bands of the Shawnee Indians, and which wholly superceded all the stipulations of previons treaties. The 3d article stipulates to pay $829,000 for the cession of all the lands to the United States, and the 11th article, after making provision to pay for certain losses, provides that the sum agreed to be paid "shall be in full satisfaction not only of such claim, but of all others of what kind soever, *and in release of all demands*

and stipulations arising under former treaties." By the 1st article the united Shawnees ceded their whole tract of 1,600,000 acres to the United States, and by the 2d article, the United States ceded to the Indians 200,000 acres, out of which every individual of the tribe was authorized to select, or to have selected for him or her, a separate tract of 200 acres, which was subsequently, in pursuance of the law of 1859, cited above, conveyed by patent to the party entitled. All the rest of the lands previously held by the Indians have been sold to the whites, and the record further shows that many of the Indians themselves have sold and conveyed parts of their several tracts to the whites, as they were competent to do by the terms of their patents and the regulations of the Secretary of the Interior made in pursuance of law.

There is no provision in the treaty of 1854 exempting these lands from taxation, or withdrawing them from the State or territorial jurisdiction. It is very plain that when the Indians ceded all their lands back to the United States, they were divested of all conditions which had previously attached to them; and when the Government afterwards conveyed a part of them to the Indians in severalty, the lands were subject only to such conditions as were stipulated by the new treaty, or expressed on the face of the patents.

The manner in which the Senate amended the treaty makes this construction of its provisions still more conclusive and incontrovertible. It is hardly justifiable in the learned counsel for the plaintiffs in error, to denounce the proceedings of the Senate as "a sham and a pretence," a mere "thimble-rigging of cession and retrocession," (see their brief, page 11,) especially when the amendments were duly explained to the Indians, and approved by them. It is reasonable to suppose that the amendments had some meaning, and it would be difficult to assign any other than that which has been suggested.

It is in fact obvious that by the treaty of 1854, a fundamental change was designed to be made in the condition of these Indians. The territorial government of Kansas was created by the act of May 30, 1854, and although the treaty

was made on the 10th of the same month, the amendments of the Senate were not accepted by the Indians until the 28th September following, nor the treaty signed by the President until the 2d of November. Besides, the agitation of the Kansas-Nebraska measure was long continued and of great intensity. The Shawnee Indians are among the most intelligent and advanced of all the aborigines; and it is impossible they should not have understood and appreciated the terms of this treaty, as affected by the organization of the new territory.

The record shows that the lands in question are not in one continuous tract, but are interspersed among the lands which have been sold to the whites, and which are now occupied by them. The whites and the Indians are living as neighbors in one community. Alike they resort to the courts of the State for the maintenance of their rights, for the distribution of their estates, for the establishment of their roads, and even, under the regulations of the Interior Department, for the conveyance of their lands. (See the 13th article of the treaty, and the "rules and regulations," p. 22, record 325.) When the regulations were issued in 1861, the Government required an "authenticated copy of judicial proceedings, showing that partition of the lands granted to the original reservees has been made by a court having jurisdiction thereof," in order to enable the heirs of a deceased Indian to sell a portion of the estate. The lands must be in the State, if its courts have jurisdiction. This official regulation of the Secretary was the act of the Government done in pursuance of law. It has never been annulled or repudiated, and it is in accordance with the spirit and evident purpose of all the legislation on the subject, as evidenced by the 4th sec. of the "act making appropriations for the Indian Department," &c., approved March 3, 1863. (12th stat., 793.) This law provides "that the President be authorized to enter into treaties with the several Indian tribes now residing in the State of Kansas, providing for the extinction of their titles to *lands held in common* within said State, and for the removal of such Indians of said tribes *as hold their lands in common* to suitable locali-

ties elsewhere," &c. It is the well known policy of the Government to disembarrass the States as far as possible of all Indian tribes not subject to their jurisdiction. Why is this law so emphatic, repeating the phrase of lands "held in common," and providing only for the removal of Indians who thus "hold their lands in common?" By the treaty of 1854, certain Shawnees did elect to hold their lands in common as they were authorized to do. It was generally understood, both among the Indians and the whites, that those who took their lands in severalty became citizens of the territory. They did so by their own choice, and by the full consent of the tribe; for such were the provisions of the treaty as made and ratified by the tribal authorities. And so it was understood by the Territorial authorities of Kansas, for on the 23d February, 1860, a law was passed (compiled laws of Kansas, p. 602,) to the effect "That all Indians in Kansas Territory to whom lands have been set apart in severalty or by families, and who shall receive patents therefor from the United States, are hereby declared to be, and are made citizens of the Territory of Kansas." This law was within the legislative power of the Territory as given by the organic act; and although Congress might have annulled it, there was never even any intimation of a disposition to do so. In fact, the law, which still remains on the statute book of Kansas, is in perfect conformity with the legislation and the avowed policy of the Federal Government.

The foregoing facts seem to leave no doubt as to the understanding and intention of the authorities and people of the United States; and it will be readily seen from the proofs in the record, that the Indians themselves understood the treaty in the same sense. Blue Jacket himself giving testimony in his own case, (p. 18, Record 325,) says: "When Shawnees die, they go to Probate Court and get administration." "Some of the Shawnees have sold part of their head rights to whites, who have settled thereon and improved the same. Roads are laid out through their head rights by county and State officers." "On some of these lands so purchased, whites have farms, houses, orchards, and school-houses, and

the Shawnees and whites live together as neighbors and friends, trafficking with each other as the whites do with each other." On page 19, a witness for the Indians, himself one of the tribe, says: "A number of Shawnees voted at the election for county seat in 1858. Shawneetown was a candidate. I was Judge of township election in 1863." On the same page, William Holmes have been called to prove that a certain case was dismissed from one of the courts in 1858, on the ground that the plaintiff was a Shawnee Indian, states on cross-examination, that sometimes the Shawnee council would refer him to the courts of the State; that they were open in disputed cases.

On pages 24, 25, 26, and 27, the proof is ample to show that the Indians generally appealed to the courts of the State, received the benefit of the county schools, applied for public roads through their lands, and voted at the elections.

It is true that something like a tribal organization has been maintained, and an Indian agent still resides among them to conduct their affairs with the Government. But it must be remembered that a number of the Shawnees still hold their lands in common as authorized by the treaty of 1854. The State of Kansas has never interfered with these nor taxed their lands, although it is not clear that it might not do so. The question, however, does not arise in these cases.

The tribe is evidently in a state of transition. Part of its members have adopted the habits of the whites, while the remainder adhere to the Indian customs. The law already quoted authorizes the President to treat for the removal of the latter. It does not interfere with the former, but leaves them to intermingle with the whites and to be protected by the laws of the State.

All the foregoing arguments apply with full force to the cases of the Wea and Miami Indians, with the exception that there is no provision in any treaty with these Indians which either excludes their lands from the boundaries and jurisdiction of the State, or exempts them from taxation. In this respect, their cases may be considered stronger than that of the Shawnees, owing to the temporary provision in the treaty

of 1831 with the Ohio Shawnees, which the plaintiffs in error have seized upon with avidity, as decisive of the question involved. It has been shown how utterly untenable is this assumption.

But in the treaty with the Miamis, made the 5th June, 1854, (stat. at large, 10th vol., p. 1094,) there is a provision in these words: "And the lands so patented shall not be liable to levy, sale, execution, or forfeiture."

The defendants in error claim that whatever may be the effect of these words in that treaty, the omission of them in all the other treaties is conclusive in the cases of the Shawnees and Weas, on the well known principle of law so tersely expressed in the maxim, "*expressio unius, exclusio alterius.*" The converse of this proposition is equally true, and is especially applicable in these cases.

In several Indian treaties, stipulations are contained exempting their lands from taxes, and, in some instances, excluding them from the boundaries and jurisdiction of States and Territories. The absence of these provisions in the treaties now under consideration, affords a conclusive argument against the construction sought to be put upon them by the plaintiffs in error.

As to the peculiar words contained in the treaty of 1854 made with the Miamis, to the effect that their patented lands shall not be liable to "levy, sale, execution, or forfeiture," nothing can be added to the argument contained in the opinion of the Supreme Court of the State of Kansas, which is quoted in full as an appendix to the separate brief of the plaintiffs in error, in the case of the Miamis, No. 327. The defendants in error have not thought proper to present a separate brief in that case, because in all other respects, except in the words of the treaty just quoted, all the cases are identical. The word "levy" is used in two senses. To levy a writ of "*fieri facias*" [redacted]," is wholly different from the act of levying taxes. We say, the State levies a tax of one mill or ten mills, as the case may be, on the hundred dollars. In this expression, the sense is that of *imposing* or *estimating* a tax. "Levy and sale" is a technical

term usually applying to the issuance of writs for the enforcement of judgements by courts of justice. The right of eminent domain in the State is so high and sacred, that the terms usually applied to the ordinary proceedings in the courts ought not to be construed as depriving the State of its most indispensable prerogatvies without the clearest indications of such an intention in the treaty.

The decision of the Supreme Court of Kansas on the general question involved in these cases is sustained by the case quoted, Lowry *vs.* Weaver, 4 McLean, 82, in which Mr. Justice McLean distinctly says, that lands in precisely the same situation as those now in controversy, are "not withdrawn from the sovereign action of the State," but "may be taxed by the State." If this expression were only a *dictum* of that eminent judge, it would be entitled to great respect; but it was more than a *dictum*; it was a part of the argument on which his decision was founded.

The learned counsel for the Indians have waived all other considerations, and have placed their argument on the sole ground that the laws and treaties applicable to these cases exempt the lands from taxation, and exclude them from the jurisdiction of the State. This argument, I think, has been successfully met. If they had not put their case on this ground, which is evidently the only plausible ground on which it could be maintained with even a show of reason, I should have called the attention of the Court to the following authorities:

1. There must be a clear and plain infraction of the constitution, or a law, or treaty, made in pursuance thereof, before a court will declare a statute unconstitutional. (*Sedgwick on Stat. Law*, 482.) The author says: That the presumption is that every state statute the object and provisions of which are among the acknowledged powers of legislation, is valid and constitutional; and such presumption is not to be overcome unless the contrary clearly appears. (*He cites Fletcher vs. Peck*, 6 *Cranch*, 128; *Exparte. McCullum*, 1 *Cowen*, 564; *Morris vs. The People*, 3 *Denio*, 318; *Newell vs. The People*, 3 *Seld.*, 109; *Decamp vs. Eveland*, 19 *Barb.*,

81; *Clarke vs. The People*, 26 *Wend.*; *The Sun Mutual Insurance Co. vs. City of New York*, 5 *Sandford*, 10; *Lane et al. vs. Dorman et ux.*, 3 *Scam.* 238.)

2. Of the inherent power in the State to impose taxes there can be no debate. It is an attribute of sovereignty, of the same nature as the right of eminent domain. *Blackwell on Tax Titles*, 1; *People ex rel. Griffin vs. The Mayor of Brooklyn*, 4 *Comstock*, 119, 436; *Providence Bank vs. Billings*, 4 *Pet.*, 561; *State Bank of Ohio vs. Knoop*, 16 *How.*, 319; *West River Bridge Co. vs. Dix*, 6 *Howard*, 531.

3. This right of taxation is never presumed to be surrendered. It can only be lost by positive legislative enactment or compact, or by a treaty clearly expressed. (*Providence Bank vs. Billings*, 4 *Pet.*, 514, 561, 563; *Phil. & Wil. R. R. Co. vs. Maryland*, 10 *H.*, 393; *State Bank of Ohio vs. Knoop*, 16 *Howard*, 387, 389; *do.* 435; *State vs. Newark*, 2 *Dutch* (*N. J.*) 519; *Indianapolis vs. McLane*, 8 *Ind.*, 28; *Stein vs. Mayor of Mobile*, 17 *Ala.*, 234; *Com. Dig.* 853, *clause* 60.)

In Massachusetts Indians are exempt from taxation by a special statute. 3 *Kent*, (10*th Ed.*,) 518, *note b.*

In New York Indians are taxed. 8 *Cowen*, 189.

4. The power of the United States over Indian affairs in a State is merely political Its limits are defined in the cases of *the United States vs. Bailey*, 1 *McLane*, 234; *do. vs. Cisna*, *do.* 254.

5. If the Indian lands held by them in severalty be exempt from taxation and from the jurisdiction of the State by virtue of treaty stipulations, the exemption would be a covenant running with the land, and would be good in the hands of the plaintiffs' assignees. *State of New Jersey vs. Wilson*, 7 *Cranch*, 165.

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